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TRADE PROMOTION AUTHORITY ANNOTATED

INCLUDING PROCEDURAL PROVISIONS FROM THE TRADE ACT OF 1974 AND THE TRADE ACT OF 2002 AS AMENDED

COMMITTEE ON FINANCE
UNITED STATES SENATE

MAX BAUCUS, *Chairman*

Annotations by William G. Dauster
Deputy Staff Director and General Counsel
Committee on Finance

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PREFACE

This document reprints the sections setting out the Trade Promotion Authority — previously called "fast track" — procedures for consideration of trade bills, explains references found there, points out some of the precedents interpreting the law, and incorporates some legislative history material. It magnifies the details with the hope that seeing more will also allow the reader to understand the process better.

The text includes the basic Trade Promotion Authority laws that appear in sections 151 through 154 of the Trade Act of 1974,[1] as well as sections 2103 through 2105 of the Trade Act of 2002,[2] which extend and condition their application.

The author expects that the reader will not so much read this volume as consult it. Consequently, footnotes often repeat information that relates to several different sections. The author hopes that what the volume thus loses to bulk it makes up in ease of access to information.

GUIDE TO SIGNALS

The citations in this volume follow the rules of *The Bluebook: A Uniform System of Citation*:[3]

No signal	before a citation means that the cited authority states the proposition, identifies the source of the quotation, or identifies an authority identified in the text.
E.g.,	before a citation means that the cited authority, among other authorities, states the proposition.

---

[1] Trade Act of 1974, Pub. L. No. 93-618, §§ 151-154, 88 Stat. 1978, 2001-08 (codified as amended at 19 U.S.C. §§ 2191-2194).

[2] Trade Act of 2002, Pub. L. No. 107-210, §§ 2103-2105, 116 Stat. 933, 1004-16 (codified as amended at 19 U.S.C. §§ 3803-3805).

[3] COLUMBIA LAW REVIEW, THE BLUEBOOK: A UNIFORM SYSTEM OF CITATION 46-48, 64-67 (18th ed. 2005).

See	before a citation means that the cited authority directly supports the proposition.
See also	before a citation means that the cited authority constitutes additional source material that supports the proposition. Authorities that state or directly support the proposition will precede this signal.
Cf.	before a citation means that the cited authority supports a proposition different from the cited proposition, but sufficiently analogous to lend support.
See generally	before a citation means that the cited authority presents background material related to the proposition.
See supra p. ____	means that the authority referred to or direct support appears above at the page cited.
See infra p. ____	means that the authority referred to or direct support appears below at the page cited.
Id.	means see the immediately preceding authority cited.

In addition to these signals, this volume also includes this symbol to highlight controlled time.

means that the text sets forth a procedure for controlled time in the Senate.

ACKNOWLEDGMENTS AND DISCLAIMERS

This work owes its creation to the leadership of the Senate Finance Committee, under Chairman Max Baucus, Staff Director Russ Sullivan, and Chief International Trade Counsel Demetrios Marantis.

The author is particularly indebted to the Senate Parliamentarian, Alan Frumin, whose book *Senate Procedure*[4] sets the gold standard for Senate practice, and the able Assistant Senate Parliamentarian Pete Robinson, whose

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[4] ALAN S. FRUMIN, RIDDICK'S SENATE PROCEDURE (1992) <http://www.gpoaccess.gov/riddick/index.html>.

long experience in both the House of Representatives and the Senate combines with his humor and helpfulness to render him a particularly useful source on Senate procedure. As well, the author owes a debt to his predecessor, former Finance Committee Deputy Staff Director and General Counsel Mike Evans, now of the law firm Preston Gates Ellis & Rouvelas Meeds, and to the specialists of the Congressional Research Service, whose reports[5] were valuable in formulating this work. Finally, the research work of Finance Committee interns Matt Linstroth, Stephanie Beck, Scott Richardson, and Jacob Kuipers proved extremely valuable.

Although the author has imposed on these kind souls for help in the writing of this volume, none bears responsibility for its content. The annotations included here do not necessarily reflect the views of the Senate Finance Committee or of anyone other than the author, although, as do most authors, the author does hope that others will share the views expressed here.

Finally, the author owes a continuing debt to Martin Gardner, whose work[6] has undoubtedly inspired many an annotation, and perhaps a few laws.

W.D.

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[5] *See, e.g.*, RICHARD S. BETH, TRADE AGREEMENT IMPLEMENTATION: EXPEDITED PROCEDURES AND CONGRESSIONAL CONTROL IN EXISTING LAW (Nov. 26, 2001) (Cong. Res. Serv. no. RL31192) <http://www.congress.gov/erp/rl/pdf/RL31192.pdf>; VLADIMIR N. PREGELJ, TRADE AGREEMENTS: PROCEDURE FOR CONGRESSIONAL APPROVAL AND IMPLEMENTATION (July 22, 2003) (Cong. Res. Serv. no. RL32011) <http://www.congress.gov/erp/rl/pdf/RL32011.pdf>; CAROLYN C. SMITH, TRADE PROMOTION AUTHORITY AND FAST-TRACK NEGOTIATING AUTHORITY FOR TRADE AGREEMENTS: CHRONOLOGY OF MAJOR VOTES (Oct. 7, 2002) (Cong. Res. Serv. no. RS21004) <http://www.congress.gov/erp/rs/pdf/RS21004.pdf>; LENORE SEK, WILLIAM H. COOPER, MARY JANE BOLLE, VLADIMIR N. PREGELJ, CHARLES E. HANRAHAN, MARY E. TIEMANN, & RICHARD S. BETH, TRADE PROMOTION (FAST-TRACK) AUTHORITY: SUMMARY AND ANALYSIS OF SELECTED MAJOR PROVISIONS OF H.R. 3005 AND TITLE XXI OF H.R. 3009 (June 14, 2002) (Cong. Res. Serv. no. RL31376) <http://www.congress.gov/erp/rl/html/RL31376.html>; LENORE SEK, COORDINATOR, MARY JANE BOLLE, WILLIAM H. COOPER, VLADIMIR N. PREGELJ, MARY E. TIEMANN, & RICHARD S. BETH, TRADE PROMOTION (FAST-TRACK) AUTHORITY: H.R. 3005 PROVISIONS AND RELATED ISSUES (Nov. 28, 2001) (Cong. Res. Serv. no. RL31196) <http://www.congress.gov/erp/rl/html/RL31196.html>.

[6] MARTIN GARDNER, THE ANNOTATED ALICE: ALICE'S ADVENTURES IN WONDERLAND & THROUGH THE LOOKING GLASS (1960).

INTRODUCTORY MATERIAL FROM LEGISLATIVE HISTORY

HOUSE COMMITTEE REPORT ON THE TRADE REFORM ACT OF 1973

The House Ways and Means Committee report on the Trade Reform Act of 1973 includes the following introductory material:

II. GENERAL STATEMENT

H.R. 10710 is recommended to the House by the Committee on Ways and Means after many months of work to develop trade legislation responsive to the changing needs of the U.S. economy in terms of world trade flows and the need to develop a new mechanism for legislative-executive cooperation in the area of international trade policy.

The bill that the committee has favorably reported is based on the President's trade proposals to the Congress embodied in H.R. 6767, as well as many other trade proposals that have been referred to the Committee on Ways and Means. All such proposals were subject to public hearing by your committee.

During 24 days of public hearings, your committee received testimony from 369 witnesses representing all segments of the U.S. economy. The printed record, over 15 volumes, includes hundreds of written communications from interested persons and organizations from all parts of the country. In addition, your committee has made available a number of committee prints which set forth statistical information and analyses, as well as a summary of views of the issues which have confronted the committee in its efforts to develop the trade proposal which is the subject of this report.

The bill responds to the President's request for authority to participate in the forthcoming multilateral trade negotiations. In the opinion of the committee the negotiating authority granted by the bill is fully adequate for such negotiations and recognizes, at the same time, that the best negotiating tool the United States has in seeking an open and nondiscriminatory trading world is access to the U.S. market.

The bill also provides a new mechanism for U.S. participation in, and commitments to, negotiations concerning barriers to trade involving not only traditional tariff barriers, but distortions of trade stemming from economic and social policies.

The bill recognizes that while two devaluations have improved the competitive posture of U.S. producers in world markets, those domestic statutes which endeavor to protect our producers from disruptive market penetrations and unfair trade practices must be made more effective if our domestic producing interests are to have confidence in their ability to survive competitively in the United States.

The bill is responsive to the President's request for authority to normalize trading relations with certain state trading countries. Your committee, in approving the extension of nondiscriminatory treatment to the Soviet Union and other Communist countries, has attached conditions which place humanitarian concerns and closer economic ties between East and West in their proper perspective.

The bill also responds to a commitment made by two Presidents to extend generalized tariff preferences to developing countries.

Finally, it is important to stress that the achievement of these objectives entails a substantial delegation of congressional authority. Accordingly, the bill makes certain procedural reforms, both in terms of the development of an appropriate oversight role for the Congress and in terms of providing a focal point in the executive branch for carrying out the trade policies jointly agreed upon by the Congress and the President.

H.R. 10710 is a reform bill in every sense of the word. It does indeed endeavor to bridge the gap between what has been desirable policy in the past and the needs of a future, with a view toward a continued policy of trade expansion in cognizance with the shifts in comparative economic strengths that have taken place over the past two decades. H.R. 10710 will permit the United States to continue to exert leadership and new initiatives in international trade policy by recognizing both the overall benefits of continued trade expansion and requisites of equity and safeguards for our producing and consuming interests in international trade.

III. PRINCIPAL FEATURES OF THE BILL

To achieve the general objectives of the bill, authority is provided to the President, subject to various limitations, to enter into trade agreements to reduce, to increase, and [in] some cases, eliminate rates of duty, and to reduce or eliminate nontariff trade barriers or other distortions of international trade; to take steps to revise and modernize the provisions of the General Agreement on Tariffs and Trade; to apply import

surcharges or quotas for balance of payments reasons; to suspend import duties or liberalize quota limitations for purposes of restraining inflation; to provide authority, under certain conditions, to normalize trade relations with certain state trading countries; and to provide generalized tariff preferences to developing countries. With respect to trade agreements involving nontariff trade barriers, and certain other authorities provided to the President, the bill establishes procedures for congressional review and for disapproval of proposed Presidential actions. Additionally, the bill provides for congressional delegates to the negotiations themselves.

The bill liberalizes existing provisions for relief from injury to industry, firms, and workers as a result of import competition, and it contains provisions to strengthen measures the United States may take against unfair trade practices, foreign import restrictions, and export subsidies.

A. Negotiating Authority

Reductions of U.S. import duties. — Under the bill (section 101), the President is authorized to enter into trade agreements for a 5-year period beginning on the date of enactment of this act. Pursuant thereto, he is authorized to proclaim, subject to certain conditions and limitations, reductions in the rates of duty to which the United States was committed on July 1, 1973, as follows:

July 1, 1973, duty:	*Percentage reduction authorized*
5 percent or less	Elimination.
Over 5 percent, not over 25 percent	60 percent.
Over 25 percent	75 percent, except that no such rate of duty may be reduced below a level of 10 percent.

Increases of U.S. import duties. — The bill will permit the President to increase rates of duty, pursuant to trade agreements, but such increases would be limited to the higher of a rate 50 percent above the rate existing on July 1, 1934, or to a rate which is 20 percent ad valorem above the rate existing on July 1, 1973.

Nontariff barriers and other distortions of trade. — Section 102 of the bill provides the President with the authority to undertake measures to reduce or eliminate barriers to (and other distortions of) international

trade, and to negotiate trade agreements with other countries and instrumentalities on a basis of mutuality for the reduction or elimination of such barriers. Trade agreements entered into under this section shall, to the extent feasible, be negotiated on the basis of each product sector of manufacturing and on the basis of the agricultural sector or sectors to assure equity of access of U.S. exports to foreign markets. Trade agreements entered into under this provision of the bill which are submitted to the Congress under the procedures specified in the bill shall take effect if, and only if, the President notifies both Houses of the Congress of his intention to enter into such agreement and if, and only if, neither House of the Congress adopts a resolution of disapproval of the proposed agreements within a 90-day period after receipt of the agreement (after it is concluded) and the implementing orders.

With respect to any trade agreement providing for the conversion of a trade barrier (or other distortion of trade) into a rate of duty affording substantially equivalent tariff protection, such agreement may also provide for the reduction of part or all of that portion of rate of duty resulting from the conversion which is attributable to such conversion. However, any proposed reduction in such rate of duty must be submitted to the Congress with a clear statement of the reductions, if any, proposed to be taken under section 101 of the bill for such article, along with a statement by the Tariff Commission of the rates of duty which afford substantially equivalent protection to the barrier (or distortion) which is being converted.

Staging requirements (section 103). — In general, this section of the bill provides that the duty reductions pursuant to trade agreements shall be staged annually as follows:

(a) a reduction of 3 percent ad valorem, or a reduction of one-fifteenth of the total reduction, whichever is greater, on the date of the first proclamation implementing the agreement, and

(b) thereafter the implementation (at 1-year intervals) of the remaining reduction in installments equal to the greater of 3 percent ad valorem or one-fourteenth of such remainder.

. . . .

IV. REASONS FOR THE BILL

A. Need for an Expanded Trade Program

The United States has been without trade agreement legislation since the expiration in 1967 of the authority under the Trade Expansion Act of 1962. Thus, for more than 6 years the United States has lacked clear, agreed-upon guidelines respecting the appropriate posture of our Government in this critical area.

The need for a carefully articulated position from the Congress in the trade field has perhaps never been greater. Within the last decade, world trade has expanded at a rapid pace overall, but unevenly as between nations or blocs of countries, in part because of trade distortions in areas other than tariffs. World productive capacities have expanded markedly in an ever-growing number of product lines, bringing pronounced shifts in traditional trade patterns. Additionally, the role of the multinational corporation has grown sharply, bringing forth complex policy issues, both for the host country in which the investments of such concerns are made, as well as for the parent country of the firms accounting for such investment.

Throughout the decade we have also witnessed the growth of massive balance-of-payments disequilibria among nations. At the same time the traditional surplus in the U.S. balance-of-trade steadily declined in the latter half of the 1960's and turned to substantial deficits in the past 2 years for the first time in this century.

In the 25 years since the basic international monetary and trading rules were established after World War II, major structural changes had occurred in the world economy as Europe and Japan greatly improved their economic strength and became strong competitors with the United States. A monetary system which was able to function smoothly when the United States was in a preeminent economic and financial position, became increasingly outmoded and inequitable. The breakdown of the world's monetary system brought with it grave uncertainties and distortions to the world's financial and trading communities. The system became increasingly subjected to recurrent crises, resort to controls, and rising projectionist sentiment, both in the United States and abroad.

The monetary and trade actions by the United States in August 1971 marked a turning point in our foreign economic policy and a recognition of the need for fundamental reform in the principles and institutions governing international monetary and trade policy. The realinement of exchange rates in the Smithsonian Agreement in December 1971, and the monetary agreements in February 1973 combined, resulted in an overall

appreciation of the major currencies of Europe and Japan against the dollar of about 25 percent. Efforts to produce long-term basic reforms of the international monetary rules and institutions are progressing.

The currency realinements of 1971 and 1973 restored the dollar to a more realistic value relative to other currencies. As expected, there was the customary lag before the realinements had a positive effect on the U.S. trade balance, the initial result being to raise the dollar value of imports and to lower the dollar value of exports, affecting their volume. The impact of the currency realinements are now being reflected in the 1973 trade balance, which has shown substantial improvement over last year. The longer term effects of the currency readjustments are yet to be fully experienced.

The overall significance of tariffs has been reduced as a result of successive trade negotiations and by the exchange rate realignments in the past two years. However, tariffs continue to afford significant protection on many products. In addition, there are a multiplicity of other trade barriers and other trade-distorting measures, often applied unilaterally and of a discriminatory nature, which have become relatively more important as tariffs have been reduced and which disadvantage exports or unduly stimulate imports of the United States and other countries. Some of these measures restrict imports directly, such as quantitative limitations; others, such as Government procurement practices, give preference to domestic producers; some measures impede imports but were instituted for social reasons, such as health and sanitary regulation; some constitute additional charges at the border, such as variable levies; others subsidize exports rather than restrict imports. The proliferation of preferential trading arrangements in recent years discriminates against exports of the United States and other countries not parties to the arrangements.

These and other measures have brought into serious question the viability of the instrumentality of the General Agreement on Tariffs and Trade (GATT) as it now exists. Some of its rules are clearly inadequate to cope with today's complex trade issues. Some of its articles are outmoded; some are openly [flouted]; rules or provisions for some current commercial policy issues are nonexistent.

Additional problem areas that can no longer be safely ignored include such issues as the rapidly growing disequilibrium between the trade and economic development of the developed and underdeveloped countries; trade issues arising from the utilization of the labor of low-wage countries

without regard to acceptable or equitable fair labor standards; and the proliferation of trading practices that violate commonly acceptable standards for fair trade.

The complexity of the trade issues confronting the free world obviously is immense. Obviously too, the close interrelationship of the economies of the United States and other countries impel a massive and comprehensive effort in the multilateral trade negotiations now underway to bring order out of these trading problems.

These negotiations should aim to achieve a more open, nondiscriminatory, and equitable world trading system through the reduction of barriers which distort trade, and reform of world trading rules and practices which will be accepted and applied by all major trading countries. While reform of international monetary institutions has been considered, there has been no similar urgency for reform of international trade institutions. Your committee considers such reform to be imperative.

For the United States to exercise leadership and initiative in these critical and complex areas, it must have clearly enunciated objectives, carefully delineated guidelines, and a constructive, cooperative effort between the executive branch and the Congress if we are to be truly effective in this initiative.

Accordingly, your committee has endeavored to provide legislation that meets these imperatives. We have attempted to draw legislation that will provide the executive branch with authority to address itself effectively to such issues as:

- The mutual reduction of tariffs, and of nontariff barriers (or other distortions) to trade to assure equality of market access among nations, both overall, and on a product-sector basis.

- Trade policy measures needed to deal with balance-of-payments deficits or surpluses.

- The adequacy and equity of the General Agreement on Tariffs and Trade for dealing with tariff and trade problems.

- The participation by the United States in a common effort of developed countries to provide generalized tariff preferences to

the products of developing countries to encourage development and diversification of their trade.

We have also endeavored to articulate an appropriate cooperative role for the Congress and the executive branch in an effort to come to grips with these very complex problems and issues in which delegation of congressional authority is needed.

. . . .

V. GENERAL DESCRIPTION OF THE BILL

A. Trade Agreement Authority

Basic authority to enter into trade agreements

The bill would authorize the President to enter into trade agreements with foreign countries or instrumentalities of foreign countries (e.g., the Commission of the European Communities) during the 5-year period following the date of enactment of the legislation, and to modify or continue rates of duty within specified limits to give effect to such agreements.

The President may enter into trade agreements whenever he determines that existing duties or other import restrictions of any foreign country or of the United States unduly burden and restrict our foreign trade and that any of the purposes of the bill would be promoted by such trade agreements.

The President has not had authority to enter into trade agreements since the expiration of such authority under the Trade Expansion Act of 1962 on June 30, 1967. Your committee considers it essential that the Congress provide such authority for a 5-year period to enable the United States to prepare for, participate in, and complete the forthcoming major multilateral trade negotiations.

Authority to modify rates of duty

The bill would authorize the President to increase, decrease, or continue any existing rates of duty or continue duty-free (or excise) treatment in connection with any trade agreements with foreign countries. The exercise of this authority is subject to specific limitations and is conditioned by certain determinations the President is required to make

and prenegotiation procedural steps he must follow.

Basic authority to modify duties. — in connection with a trade agreement the bill permits the President to:

(a) Decrease rates of duty existing on July 1, 1973, (1) by 60 percent in the case of duties of 25 percent ad valorem or below; and (2) by 75 percent in the case of duties of more than 25 percent ad valorem, provided, however, that no duty currently above 25 percent ad valorem can be reduced to a rate below 10 percent ad valorem. Duty reductions on rates of 5 percent ad valorem or below are not subject to these limitations and these rates can be eliminated.

(b) Increase rates of duty existing on July 1, 1973 (or impose duties), to a level 50 percent above the rate existing on July 1, 1934 (50 percent above the column 2 rate) or 20 percent ad valorem above the existing rate, whichever is higher. This limitation may be exceeded however, when necessary to obtain a substantially equivalent level of protection if a nontariff barrier or other trade distortion is converted to a tariff.

In order to simplify rates of duty subject to modification where the application of the limits in (*a*) above would result in a rate other than a whole number or an even half-number, the above limits may be exceeded by not more than one-half of 1 percent ad valorem for rounding purposes.

Staging requirements. — The bill would require that tariff reductions may not take place in less than 15 equal annual installments or by annual reductions of a maximum of 3 percent ad valorem, or one-fifteenth, whichever is greater. For example, the total reduction of a 25 percent duty to 10 percent could take place in five stages of 3 percent ad valorem reductions each. Alternatively, when the President finds it appropriate the reduction could be staged over a longer period up to 15 years. Reductions of 10 percent or less of an existing duty are exempt from staging requirements. For example, a reduction from 50 percent ad valorem to 45 percent ad valorem could take place at one staging and in determining the duty rate in the final stage. The purpose of the staging provisions is to provide time for the adjustment of domestic industries and workers to the effects of the reduction or elimination of duties under a trade agreement.

The staging provisions also cover the exceptional situation in which it might be necessary to interrupt the implementation of a trade agreement

concession, if the rate of duty has been increased for any reason. This occurs, for example, when staging is suspended during the period of application of an import relief measure. In that case, the trade concession rate last in effect must go back into effect for the remainder of the 1-year period that the stage was not in effect due to the suspension. The remaining part of the time limit for that stage must be exhausted before the next stage can go into effect. For example, if the staging is interrupted 3 months after the second stage begins, the second stage rate would have to be put into effect when the interruption ended for the 9 months remaining before implementation of the third stage. In addition, no period during which the implementation of the trade agreement was suspended by a duty increase shall be used in determining the expiration of the 15-year maximum period for staging.

Your committee has not recommended the unlimited tariff modification authority requested by the President. However, your committee believes it essential that the Congress grant the President tariff negotiating authority adequate to obtain solutions to some of the trading problems of particular concern to the United States in the forthcoming major multilateral trade negotiations. The purpose of this authority is to give the President the bargaining leverage and negotiating flexibility required to achieve the overall objectives of expanding foreign market access for U.S. exports and a more open and nondiscriminatory trading system. In particular, broad authority is needed to obtain reductions of discriminatory aspects of preferential trading arrangements and of the competitive disadvantage to our exports brought about by tariff elimination between the original six members of the European Community and its new members (United Kingdom, Denmark, and Ireland). Your committee understands that, to the extent feasible, this authority shall also be utilized so as to insure reciprocity of market access to each sector of agriculture, manufacturing, and mining.

The percentage tariff reductions authorized in the bill should be viewed in the context of present overall tariff levels, which are about 35 percent lower today than they were prior to the Kennedy round of trade negotiations. The authority to reduce duties above 25 percent ad valorem by 75 percent, is subject to maintaining a minimum duty of 10 percent ad valorem.

The authorities would permit the use of various types of negotiating approaches and techniques most appropriate for achieving these goals, for example, across-the-board reductions of a fixed percentage, reductions of tariffs and other trade barriers on a product sector basis, harmonization

of duty rates among countries overall or on particular product areas, item-by-item negotiations, or a combination of such techniques. At the same time, the limitations on the degree of tariff reductions, the staging provisions, the reservation of certain articles from the negotiations, and the prenegotiation procedures for hearings, advice, and consultations with the Congress and domestic producers and private organizations, endeavor to provide the necessary safeguard to ensure that the authority will not be exercised to the detriment of domestic interests.

Your committee understands that the authority to increase tariffs which has always been granted the President, subject to limitation, would not be used to raise tariffs across the board. Rather their authority is necessary for possible use in specific cases; for example, where tariff relationships among countries on particular products or in particular product sectors might warrant the harmonization of duty rates among countries. This process could involve some tariff increases as well as decreases. This authority could also be used if the President decided to convert other types of trade barriers to fixed tariffs. However, in examining these latter possibilities, your committee concludes that in most cases it would be preferable to reduce or phase out the import restraint of the nontariff barrier itself, rather than to resort to an often complex and unrealistic procedure to convert and reduce in terms of a hypothetical rate equivalent. While the column 2 rates of duty are high on many products, conversion to tariffs of other trade barriers may require raising tariffs above the limits applicable to other uses of this authority in order to achieve a substantially equivalent level of protection.

Nontariff barriers and other distortions of trade

Considerable concern has been expressed by your committee about the presence of nontariff barriers and other trade distorting measures which, in some cases, have grown absolutely, and which in others have grown relatively more important as tariffs have been progressively reduced through previous trade negotiations. Indeed, in 1962 the Congress expressed concern that barriers other than tariffs were negating U.S. trade agreements rights, and in the Trade Expansion Act of 1962 included section 252 providing for action by the President against unfair or discriminatory foreign import practices. Little or no action has been taken under this provision, however, and many of the problems, insofar as U.S. exports are concerned, have become institutionalized, making it all the more difficult for the United States to export. The erosion of the principle of nondiscriminatory treatment with the proliferation of preferential trading arrangements in recent years, together with interna-

tional trading rules and practices which are outdated and unrealistic in today's trading world, or are not accepted and applied by all major trading countries, reduce both the opportunities for growth of U.S. exports in foreign markets and the mutual benefits intended by reciprocal trade concessions. Particular concern was expressed by your committee about the presence of more discriminatory practices and nontariff impediments to trade in some countries which deny equality of treatment and equivalent market access between countries in the same product or product sector; for example, in agriculture and high technology manufactures.

While offering a most attractive and accessible market to foreign producers, as indicated by the growing importance of manufactures as a share of total imports, the United States also maintains a number of barriers and other trade distorting measures which are of considerable concern to our trading partners. The inclusion in the bill of specific negotiating authority on barriers makes it clear that the Congress as well as the administration attaches a great deal of importance to the reduction or removal of nontariff barriers in the major multilateral negotiations. For the purposes of this bill barriers include the American selling price (ASP) system of valuation. Given the diverse nature and complexities of such barriers and the fact that they are imbedded in domestic laws in many cases, [it] has not been possible to frame general implementing authority which can apply to the various types of agreements which may be negotiated. Thus, provisions on this bill are intended to meet the twofold objectives of (1) expediting and reducing the uncertainties of the process by which agreements can be implemented, thereby increasing the U.S. ability to negotiate agreements with foreign countries; and (2) providing an increased role for the Congress in the trade agreements program through procedures enabling its proper consideration of agreements before and after their implementation.

The bill contains a statement by the Congress urging the President to take all appropriate and feasible steps within his power to reduce or remove trade barriers, including the negotiation of trade agreements with foreign countries. The President is authorized to enter into such agreements during the 5-year period following enactment of this bill.

While it is not possible at this time to anticipate all of the types of agreements that might be negotiated by the President under the authority of section 102, particularly with respect to the number of other parties to such agreements[, t]he authority granted in section 102 is not intended to be an additional grant of authority for the President to extend the benefits

of trade agreements on less than a nondiscriminatory basis.

In addition, the bill includes a provision stating that the attainment of competitive opportunities for our exports in developed countries equivalent to those accorded in our market to imports is to be a principal U.S. negotiating objective with respect to trade agreements on nontariff barriers. U.S. negotiators are to seek equivalent market access and equality of treatment, as between countries, for agricultural products and for product sectors of manufacturing. To the maximum extent feasible and appropriate, negotiations on nontariff barriers are to be conducted on the basis of product sectors to achieve this negotiating objective.

It is the committee's intention that, where feasible, competitive balance should be sought for major product sectors within industry and agriculture. Industrial product sectors are to be defined by the Special Representative for Trade Negotiations together with the Secretaries of Commerce or Agriculture, as appropriate, and after consultation with the Advisory Committee for Trade Negotiations and interested private organizations. The product sectors may be broad in scope as appropriate to best accomplish the negotiating objective.

While the bill does not specifically require the establishment of product sectors in agriculture, it is the committee's intention that, where feasible, competitive balance should also be sought for major agricultural products. Concern has been expressed that provisions benefiting our domestic dairy industry would be negotiated away in order to secure greater access for other agricultural exports, with little regard for the severe discrimination and high level of protection afforded dairy products by our trading partners. But the administration has assured the committee that protection for our own dairy industry would not be the subject of negotiation unless dairy policies of our major competitors were also on the table.

The committee fully expects that the administration will, to the extent feasible, use its authority to provide equivalent market access for agricultural products.

Your committee understands that in some cases it may not be feasible to attain reciprocal concessions on nontariff barriers if the conduct of negotiations is limited to a product sector basis, given the diverse types and differing restrictive levels of nontariff barriers and tariffs, as well as the unequal competitive advantage and trading interest among countries in particular product sectors. In some cases a trade practice may apply to

more than one product sector. In such cases, it may be more appropriate to negotiate a solution which can then be applied to all products involved. In some other cases, nontariff barriers are a form of protection for a particular product and reciprocal concessions to achieve its reduction or removal may not be possible without tradeoffs in concessions among other product sectors.

Wherever feasible, however, it is the clear requirement of the Congress that negotiations on nontariff barriers be conducted on a product sector basis to achieve equivalent market access and open, nondiscriminatory trading treatment among countries within the particular product sector. However, other negotiating approaches may be used to achieve solutions to nontariff barriers, and negotiations may take place across sectoral lines with tradeoffs of concessions between sectors, including between agriculture and industry, if a product sector approach is not feasible in a specific case.

Before the President enters into an agreement under this section to reduce barriers or other trade distorting measures he is to consult with your committee, and the Committee on Finance of the Senate. Consultations should also be held with any other congressional committee with original jurisdiction over the subject matter covered by the agreement. The principal purpose of these consultations is to assess the ways in which domestic statutes or regulations would be affected by the agreement and consequently whether or not further congressional action will be required before the agreement can be implemented.

Congressional veto procedure

The bill contains a congressional veto procedure (as an alternative to existing procedures) which is applicable to the implementation of trade agreements. The procedure may be used whether or not further congressional action is required. Thus, the President may submit agreements and implementing documents under this procedure when domestic statutes would be affected or when further congressional action, while not required, would otherwise be appropriate.

If State laws would be covered by the subject matter of the agreement, such laws could be superseded by the orders and regulations accompanying the agreement to the extent that Congress has authority to change such laws by ordinary legislative action.

Any trade agreements involving the reduction or elimination of non-

tariff barriers submitted to the Congress under this procedure can be implemented and any necessary or appropriate proclamations and orders carried out only if there is compliance with the following procedures:

(1) The President must give at least 90 days advance notice to both Houses of Congress of his intention to enter into a trade agreement on a particular subject and must publish the notice in the Federal Register. While it is anticipated that the President shall make every attempt during this period to fully indicate and explain the effect of a contemplated agreement on domestic laws, regulations, and practices, it is obvious that it will not be possible to predict the exact provisions of an agreement not yet consummated. Therefore failure to specify in advance specific statutes, regulations, or practices likely to be affected by an agreement shall not invalidate subsequent agreements which otherwise comply with the provisions of title I. The purpose of the 90-day notice requirement is to assure consultation by the executive branch with the Congress, including the appropriate committees of the Congress, on the subject matter of a proposed agreement, to afford the Congress an opportunity to hold hearings, to indicate its reactions to the agreement, and to recommend modifications before it is entered into.

(2) After entering into the agreement, the President must deliver a copy of it and any proclamations and orders proposed for its implementation to both Houses of Congress, with an explanation of how they affect existing law and a statement of the reasons why the agreement serves U.S. interests and why each proclamation and order is necessary and appropriate.

(3) The agreement enters into force and the proclamations and orders take effect only if neither House of Congress adopts, by a majority of those present and voting, a resolution disapproving of the agreement during the 90-day period following the delivery of the documents.

If an agreement, together with the proclamations and orders necessary for its implementation, has been considered by the Congress pursuant to this section and has been disapproved by either House under this provision, it may be resubmitted together with new proclamations and orders, without meeting the requirement of section 102(f)(1) for a preliminary 90-day period of consultation.

The congressional veto procedure is to be considered an optional

method of implementation, which is particularly applicable whenever it is determined through consultations with the appropriate congressional committees that domestic statutes would be affected by the nontariff barrier agreement. Present procedures available for implementing nontariff barrier agreements would continue unchanged. Consultation with the Congress could indicate that these traditional methods, such as seeking legislation, were preferable to use of the congressional disapproval resolution procedure. The traditional procedures referred to are:

(1) completion of an international agreement on an ad referendum basis and submission to the Congress for approval through implementing legislation (or seeking in advance approval by act of Congress for entering into and implementing an agreement), and

(2) completion of an international agreement and its submission to the Senate as a treaty.

Conversion of nontariff barriers to tariffs. — This bill enables the President to negotiate trade agreements under section 102 involving the conversion of a U.S. trade barrier to tariffs of a substantially equivalent level of protection. The agreement under section 102 may also provide for the reduction or elimination of that portion of the tariff which represents the conversion of the nontariff barrier. However, the section 102 agreement cannot provide for the reduction of the column 1 rate of duty existing prior to the conversion. Section 101 can be used for this purpose with respect to an article on which a nontariff barrier has been or will be converted under section 102 if the following conditions are met: on or before the date on which the section 102 agreement for conversion of the nontariff barrier is submitted to the Congress under the congressional veto procedure, a statement of the reductions proposed in the column 1 rates under section 101 is also submitted, together with the determination by the Tariff Commission of the converted rates on such articles which afford substantially equivalent protection.

For example, if the column 1 duty is 30 percent ad valorem and the rate attributable to conversion of the nontariff barrier [NTB] on the article is 70 percent giving a total duty of 100 percent, a trade agreement under section 102 can only provide for elimination of or reductions in the 70 percent duty — the 100-percent rate could be reduced all or part way to 30 percent. The tariff limitations under section 101 and the staging provisions of section 103 would not apply to reductions in the 70 percent duty. This provides treatment comparable to that available in the case on an agreement for reduction or elimination of other nontariff barriers by

means other than conversion. At the time the agreement for conversion and reduction of the NTB is submitted for congressional review, Tariff Commission advice on the rate of duty to which the NTB should be converted in order to afford substantially equivalent protection must be included. The 30 percent duty (the portion not attributable to conversion) could have been reduced earlier, simultaneously, or at a later date under section 101 subject to the requirement of notice to the Congress at the time that the NTB agreement is submitted to Congress (see sec. 102(g)), and subject further to the limitations under section 101. Thus the original 1973 rate of duty could be reduced by 60 percent, from 30 percent, to 12 percent ad valorem if the Congress is informed about the reduction in the 30 percent duty no later than the time the NTB agreement is submitted.

The purpose of these provisions is to ensure that the Congress has full and complete information available to it on all tariff modifications proposed under trade agreements before they approve any agreement with respect to an article. These provisions ensure that section 101 is not used to reduce a 1973 rate of duty subsequent to congressional consideration under the veto procedure unless the above-described advance notice has been given.

Whether the President chooses to convert the nontariff barrier into tariffs or to negotiate its direct removal or reduction, the congressional veto procedure is available to implement the agreement particularly where the implementation requires changes in domestic statutes. In the absence of further legislation, it is expected that trade agreements modifying the American Selling Price and the Final List methods of customs valuation would be made subject to the congressional veto procedure whether or not the agreements involved the conversion of these measures into tariffs.

The committee has been assured, however, that due to the complexities involved and, in particular, to the unique legislative character of establishing a valuation and classification standards for international trade that the adoption of a new system of customs valuation or the Brussels Tariff Nomenclature will be the subject of a request for affirmative congressional approval through the regular legislative procedure.

It is noted that the conversion of nontariff barriers to rates of duty may result in the increase of the existing column 1 or trade agreement rates to a level higher than the currently existing column 2 or statutory rate. In such cases, general headnote 4(b) of the Tariff Schedules of the

Umted States will operate automatically to increase the column 2 rate to the new column 1 level.

. . . .

E. Congressional Disapproval Procedures With Respect to Presidential Actions

Due to the unique nature of nontariff barriers and other distortions of trade including their relationship to domestic law and the problems of the implementation of trade agreements providing for their reduction or elimination, it has been difficult to develop appropriate trade agreement authority in this area. The President, in his trade proposals embodied in H.R. 6767, proposed a procedure encompassing review and possible congressional veto of trade agreements submitted by the President to the Congress when he determined further congressional action for the implementation of such trade agreements was necessary.

In considering the President's proposal on nontariff barriers, the committee determined that it would be constitutionally more appropriate that the Congress authorize the President to enter into trade agreements providing for the reduction or elimination of nontariff barriers and other distortions under specific guidelines, since the implementation of such trade agreements often involved other domestic legislation. The committee also has considerably tightened the provision with respect to congressional disapproval procedure for agreements negotiated and presented to the Congress, and for proposals for their implementation. Consultations with the appropriate committees are required, including the Committee on Ways and Means in the House and the Committee on Finance in the Senate. Moreover, it is envisaged that there will be continuing consultations with the congressional delegation to the negotiations as provided in section 161 of the bill.

In developing the procedures for congressional consideration of trade agreements respecting nontariff barriers, the committee determined that in a number of other instances authorities granted to the President might also be subject to the same procedures for possible disapproval. Thus, in addition to the procedures for disapproving nontariff barrier agreements, the bill provides that such procedures will be used with respect to: (*a*) actions the President might take with respect to import quotas and orderly marketing agreements under section 203, (*b*) actions the President might take with respect to unfair trade practices under section 301 and, (*c*) findings the President might make and actions the President might take

with respect to the extension of or continuation of nondiscriminatory treatment to the products of certain state trading countries.

The bill, therefore, provides for the consideration of resolutions disapproving the entering into trade agreements on distortions of trade or disapproving certain other actions as discussed above. A resolution respecting the subject matter described may be referred to the Committee on Ways and Means of the House of Representatives and to the Committee on Finance of the Senate, as well as other committees of original jurisdiction with respect to the entering into force of trade agreements on distortions of trade. The bill provides that resolutions disapproving the actions proposed by the President may be discharged from the appropriate committee if no action has been taken by such committee at the end of the 7 calendar days.

Such a motion to discharge is highly privileged and may be made only by an individual favoring the resolution, and the debate on such a motion should be limited to not more than 1 hour, time to be equally divided between the opponents and proponents. An amendment to the motion is not in order and it will not be in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

When the committee to which the resolution has been referred has reported, or has been discharged from further consideration of, a resolution, it will be in order at any time thereafter to proceed to the consideration of the resolution, and such motion is highly privileged and is not debatable. Debate on the resolution shall be limited to no more than 10 hours to be equally divided between opponents and proponents.

If, at the end of 90 days after the date which a document referred to in sections 102(f), 204(b), 302(b), or 406(a) or (b) has been transmitted to the Congress, neither House has acted favorably on a motion to disapprove of the action proposed to be taken by the President, such action will become effective.

F. Congressional Liaison and Reports

Participation by Members of Congress as advisers to the negotiating delegation, and the consultations that will be required with respect to actions contemplated by the President under the authorities granted him by the bill, envisage a degree of consultations and oversight activity not previously considered under past extension of trade agreements authority.

In order to meet this need, and in order for the Congress to carry out its responsibilities through the Committee on Ways and Means of the House and the Committee on Finance of the Senate, the bill provides that there shall be five Members of each House appointed by the President to serve as accredited official advisers to the U.S. delegation to international conferences, meetings, and negotiating sessions, with respect to trade agreements. In the case of the five Members, each either from the House and from the Senate, no more than three shall be of the same political party — their appointment by the President shall be upon the recommendation of the Speaker of the House or the President of the Senate, respectively. It is contemplated that the congressional advisers shall attend the negotiating sessions of the forthcoming multilateral trade negotiations and shall serve at other conferences, meetings, and sessions involving trade agreements.

The President shall appoint the congressional delegation to negotiations at the beginning of each regular session of Congress.

It is the consensus of the committee that the congressional delegates be selected on the basis of annual rotation in order that in the course of the 5-year period of negotiating authority, each member of the committee will have had the opportunity to serve as a congressional delegate if he so desires. On the other hand, in view of the need for some continuity, members may be reselected if that is found to be desirable. Given the unique grant of authority under the bill, the committee considers the continuing service of members of the Committee on Ways and Means as congressional delegates to negotiations to be an essential feature of oversight responsibilities of the committee.

In this provision and in other provisions of the bill, the committee has provided for its oversight responsibilities. For example, it is anticipated that the committee will hold frequent meetings of the full committee to be briefed by the committee staff, by a representative of the executive branch, and by its own members who are serving as congressional delegates, on developments in the multilateral negotiations and in trade policy. It is the plan of the committee that such briefing sessions will serve as a basis for periodic formal reports by the committee to the House. In addition, it is planned by the committee that public hearings will be held annually on the report required to be submitted by the President to the Congress on the operations of the trade agreements program and the other provisions of the bill. It is expected that with the enactment of this act, such annual reports will be submitted no later than March 31 of the year following the period for which the report is

submitted. Further, the committee intends that the Tariff Commission update and give priority to the required annual reports on the operations of the trade agreements program. It is the sense of the committee that this report by the Tariff Commission also be made timely by the submission of the report not later than 3 months after the end of the period for which the report is being prepared.

In emphasizing the importance of receiving timely reports on developments in the trade field, the committee recognizes that all the pertinent data may not be available in time for the preparation for the report. In such cases, the committee is of the opinion that submission of supplementary information could be transmitted when it becomes available. It is the intention of the committee that both the annual reports of the President and of the Tariff Commission on the operations of the trade agreements program should include information on the administration of quotas.

The bill provides in section 162 that as soon as practicable after a trade agreement has been entered into, the President shall submit a copy of the trade agreement to the Congress together with a statement, in light of the advice provided by the Tariff Commission under the prenegotiation procedures, [of] the reasons for his entering into the agreement. It shall be noted that section 102 requires that the President include in this report a sector-by-sector analysis of the extent to which trade agreements afford competitive opportunities for U.S. exports equivalent to the competitive access afforded by the United States to the importation of like or similar products, taking into account all barriers (including tariffs) and other distortions of international trade affecting that sector.

The bill further provides that the President, in submitting the report on each trade agreement entered into, shall transmit a summary of information to each Member of Congress.[7]

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[7] H.R. REP. NO. 93-571, at 3-44 (1973).

SENATE COMMITTEE REPORT ON THE TRADE REFORM ACT OF 1974

The Senate Finance Committee report on the Trade Reform Act of 1974 includes the following introductory material:

> The Trade Reform Act of 1974, as reported by the Committee, is intended to be more than a delegation of authority for negotiated reduction in the rates of duty. While a significant authority to reduce tariffs would be provided to insure the flexibility the trade negotiations will require, our foreign trading partners and our negotiators are on notice that the authority must be exercised to obtain full reciprocity and equal competitive opportunities for U.S. commerce. A complete prenegotiation procedure would be provided to avoid substantial duty reductions in import-sensitive industries. U.S. businessmen would be given the same access to the U.S. negotiating team that businessmen in other countries have to theirs.
>
> The basic authority for trade agreements in the Trade Reform Act, however, would be but one part of new trade management tools designed to open a new era of U.S. participation in the world economy. For the first time, an assault on nontariff barriers would be mandated and a constitutionally-sound procedure for Congressional consideration of the resulting agreements is provided. Outmoded international trade rules would be replaced and new codes providing for a fair and equitable access to supplies would be sought. U.S. legislation dealing with unfair trade practices would be strengthened. Reciprocal, nondiscriminatory treatment for commerce between the United States and other industrialized countries would be required; at the same time, those less developed countries which do not discriminate against U.S. commerce or withhold needed materials from the world economy would receive a preferential treatment designed to stimulate their development through trade rather than aid.[8]

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[8] S. REP. NO. 93-1298, at 18 (1974).

SIGNING STATEMENT ON THE TRADE ACT OF 1974

President Ford made the following remarks on signing the Trade Act of 1974:

Remarks Upon Signing the Trade Act of 1974
January 3, 1975

Mr. Vice President, distinguished members of the Cabinet, Members of the Congress, including the leadership, ladies and gentlemen:

The Trade Act of 1974, which I am signing into law today, will determine for many, many years American trade relations with the rest of the world. This is the most significant trade legislation passed by the Congress since the beginning of trade agreement programs some four decades ago.

It demonstrates our deep commitment to an open world economic order and interdependence as essential conditions of mutual economic health. The act will enable Americans to work with others to achieve expansion of the international flow of goods and services, thereby increasing economic well-being throughout the world.

It will thus help reduce international tensions caused by trade disputes. It will mean more and better jobs for American workers, with additional purchasing power for the American consumer.

There are four very basic elements to this trade act: authority to negotiate further reductions and elimination of trade barriers; a mandate to work with other nations to improve the world trading system, and thereby avoid impediments to vital services as well as markets; reform of U.S. laws involving injurious and unfair competition; and improvement of our economic relations with nonmarket economies and developing countries.

Our broad negotiating objectives under this act are to obtain more open and equitable market access for traded goods and services, to assure fair access to essential supplies at reasonable prices, to provide our citizens with an increased opportunity to purchase goods produced abroad, and to seek modernization of the international trading system.

Under the act, the Administration will provide greater relief for American industry suffering from increased imports and more effective adjustment assistance for workers, firms, and communities.

The legislation allows us to act quickly and to effectively counter foreign import actions which unfairly place American labor and industry at a disadvantage in the world market.

It authorizes the Administration, under certain conditions, to extend nondiscriminatory tariff treatment to countries whose imports do not currently receive such treatment in the United States. This is an important part of our commercial and overall relations with Communist countries.

Many of the act's provisions in this area are very complex and may well prove difficult to implement. I will, of course, abide by the terms of the act, but I must express my reservations about the wisdom of legislative language that can only be seen as objectionable and discriminatory by other sovereign nations.

The United States now joins all other major industrial countries, through this legislation, in a system of tariff preferences for imports from developing countries. Although I regret the rigidity and the unfairness in these provisions, especially with respect to certain oil-producing countries, I am now undertaking the first steps to implement this preference system by this summer. Most developing countries are clearly eligible, and I hope that still broader participation can be possible by that time.

As I have indicated, this act contains certain provisions to which we have some objection and others which vary somewhat from the language we might have preferred. In the spirit of cooperation — spirit of cooperation with the Congress — I will do my best to work out any necessary accommodations.

The world economy will continue under severe strain in the months ahead. This act enables the United States to constructively and to positively meet challenges in international trade. It affords us a basis for cooperation with all trading nations. Alone, the problems of each can only multiply; together, no difficulties are insurmountable. We must succeed. I believe we will.

This is one of the most important measures to come out of the 93d

Congress. I wish to thank very, very generously and from the bottom of my heart the Members of Congress and members of this Administration — as well as the public — who contributed so much to this legislation's enactment. At this point, I will sign the bill.[9]

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[9] Remarks Upon Signing the Trade Act of 1974 (Jan. 3, 1975) <http://www.presidency.ucsb.edu/site/docs/pppus.php?admin=038&year=1975&id=2>.

HOUSE COMMITTEE REPORT ON THE TRADE ACT OF 2002

The House Ways and Means Committee report on the Trade Act of 2002 sets forth the following introductory material:

I. INTRODUCTION

A. Purpose and Summary

H.R. 3005, as amended by the Committee, would establish special provisions for the consideration of legislation to implement trade agreements. These special procedures, which were first enacted in 1974, have expired with respect to agreements entered into after April 15, 1994. The purpose of this special approval process, previously called "fast track," has been to preserve the constitutional role and to fulfill the legislative responsibility of Congress with respect to trade agreements. At the same time, the process ensures certain and expeditious action on the results of the negotiations and on the implementing bill, with no amendments.

H.R. 3005, as amended, would put in place special procedures for implementing trade agreements entered into before June 1, 2005, with the opportunity for an extension to cover agreements entered into before June 1, 2007. These procedures are similar to the expired provisions, with modifications to expand and broaden consultation with Congress.

B. Background and Need for Legislation

Certain trade agreements cannot enter into force as a matter of U.S. law unless implementing legislation making any changes to U.S. law to implement U.S. rights and obligations under the agreement is enacted into law. Certain procedures, previously referred to as "fast track" and now referred to as "trade promotion authority," were first authorized in the Trade Act of 1974 in order to implement trade agreements. These procedures were first used with respect to the GATT Tokyo Round Agreements, which were approved and implemented in the Trade Agreements Act of 1979. The expedited procedures for the implementation of multilateral trade agreements have not been significantly altered since 1974 but were expanded in 1984 to apply to bilateral agreements. Extended through section 1102(c) of the Omnibus Trade and Competi-

tiveness Act of 1988, and modified to authorize the President to enter into bilateral trade agreements, these procedures were most recently used to implement the Uruguay Round Agreements of the World Trade Organization (WTO) and the North American Free Trade Agreement (NAFTA). That negotiating authority, as extended in 1991 and 1993, applied only with respect to agreements entered into before April 15, 1994.

These special procedures required the President, before entering into any trade agreement, to consult with Congress and to provide Congress advance notice of his intent to enter into an agreement. After entering into the agreement, the President was required to submit the draft agreement, implementing legislation, and a statement of administrative action. The President also consulted with Congressional committees of jurisdiction on the content of the implementing bill. Amendments to the legislation were not permitted once the bill was introduced; the committee and floor actions consisted of "up or down" votes on the bill as introduced.

The Committee believes that trade promotion authority has been a highly effective tool in securing a wide range of important, market-opening trade agreements for the United States. Because of these agreements, the Committee believes that the United States has been able to make substantial progress in opening markets, lowering tariffs, and reducing and ending non-tariff barriers to trade. These agreements are extremely beneficial in creating much-needed jobs, stimulating the economy, and raising the standard of living for American families. Without trade promotion authority in place since 1994, however, the United States has concluded only one small free trade agreement (FTA), while its competitors have continued to put in place trade agreements that disadvantage U.S. businesses, workers, and farmers. Of the 134 free trade agreements negotiated under the GATT/WTO, the United States is party to only three — the U.S.-Israel Free Trade Agreement, the NAFTA, and the U.S.-Jordan Free Trade Agreement. Europe, for its part, has in force FTAs with 27 countries and is now moving into Latin America. Since 1994, Canada (the largest market for U.S. exports) has negotiated FTAs with Chile, Costa Rica, and Israel, and is conducting preliminary talks with Japan, Singapore, Guatemala, Honduras, and Nicaragua. Likewise, Mexico (the second largest market for U.S. exports) has trade agreements with 31 countries and is now in talks with Japan, Korea, and others. The WTO predicts that by 2005 there will be more than 250 FTAs. The Committee is concerned that if the United States does not have trade promotion authority, it will be left further behind as its competitors negotiate preferential access in their best interests.

The Committee believes that the only way that the United States can negotiate these beneficial agreements is through the well-proven tool of trade promotion authority because it ensures certain and expeditious consideration of trade legislation while giving Congress a strong role to play during negotiation and implementation of trade agreements. In addition, trade promotion authority gives U.S. trading partners confidence that an agreement agreed to by the United States will not be reopened during the implementing process. Accordingly, H.R. 3005, as amended, would extend many of the provisions of the 1988 Act to future agreements, although making a number of improvements, particularly in the area of Congressional consultation.

The Committee strongly believes that passage of this legislation is squarely in the national economic and security interest of the United States. Granting President Bush Trade Promotion Authority will send a strong signal that the United States does not intend to revert to isolationism. The Committee views TPA as a key element of a broader legislative strategy aimed at building confidence in American economic leadership and avoiding a global recession.[10]

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[10] H.R. REP. NO. 107-249, at 16-18 (2002).

SENATE COMMITTEE REPORT ON THE TRADE ACT OF 2002

The Senate Finance Committee report on the Trade Act of 2002 sets forth the following introductory material:

> The Committee on Finance, to which was referred the bill (H.R. 3005) to grant trade promotion authority to the President through June 1, 2005, with the possibility of extension through June 1, 2007, having considered the same, reports favorably thereon with an amendment in the nature of a substitute and recommends that the bill as amended do pass.

I. SUMMARY

H.R. 3005 establishes special rules for the implementation of international trade agreements that the President concludes prior to June 1, 2005, with a possibility of extension to June 1, 2007. The bill would give the President the authority to proclaim modifications to certain tariff rates in order to implement such agreements. Where specific conditions have been met, legislation to implement trade agreements — including tariff reductions not subject to proclamation authority and other changes to current U.S. law — would be subject to streamlined procedures (known as "fast track procedures" or "trade authorities procedures") when considered in the House of Representatives and the Senate. Under these fast track procedures, trade agreement implementing bills would not be subject to amendment and would be guaranteed a vote on the floor of each Chamber by a date certain.

For implementing legislation to qualify for trade authorities procedures, the underlying trade agreement must make progress toward achieving the applicable objectives, policies, and priorities set forth in the bill. Further, the President must consult regularly with Members of Congress regarding agreements under negotiation. Congress reserves the right to withdraw the application of fast track procedures to an agreement or agreements in the event the President fails to consult as required.

Fast track procedures for trade agreement implementing legislation were last enacted in 1988 and extended in 1991 and 1993 with respect to certain agreements entered into before April 16, 1994. It is expected that the present extension of fast track procedures will support the President's efforts to conclude a new round of negotiations in the World Trade

Organization, an agreement to establish a Free Trade Area of the Americas, and bilateral free trade agreements with Chile and Singapore, as well as efforts to conclude additional agreements the President may identify during the period covered by the bill.

II. GENERAL EXPLANATION

A. BACKGROUND

Implementation of trade agreements often requires the United States to enact legislation modifying tariffs and making other changes to U.S. law. Congressional consideration of such implementing legislation under ordinary rules of procedure carries several disadvantages. Under ordinary rules, a bill may be amended in a manner inconsistent with the underlying agreement, which may require the President to re-open negotiation of the agreement. Ordinary rules do not require that a bill be voted on by a date certain, or that it be voted on at all. A trade agreement could be concluded and languish indefinitely.

These aspects of ordinary legislative procedure pose difficulties for trade negotiations. A foreign country may be reluctant to conclude negotiations with the United States faced with uncertainty as to whether and when a trade agreement will come up for approval by Congress. Similarly, a country may be reluctant to make concessions, knowing that it may have to renegotiate following Congress's initial consideration of the agreement.

Recognizing that the failure to implement certain agreements concluded during the Kennedy Round of multilateral trade negotiations had damaged U.S. negotiating credibility, and desiring to facilitate the negotiation and implementation of trade agreements, Congress enacted special procedures for the consideration of trade agreement implementing legislation in the Trade Act of 1974. The "fast track" procedures were first applied to the Trade Agreements Act of 1979, in which Congress approved the results of the Tokyo Round of negotiations under the General Agreement on Tariffs and Trade. Fast track procedures were renewed in 1984 and extended to a broader array of agreements. They were renewed again in the Omnibus Trade and Competitiveness Act of 1988. That Act provided for application of fast track procedures to agreements concluded through June 1, 1991 with the possibility of extension through June 1, 1993. This period was subsequently extended to April 15, 1994. The procedures in the 1988 Act were used to approve the North American Free Trade Agreement and the Uruguay Round

Agreements, including the Marakesh Agreement Establishing the World Trade Organization. Today, fast track procedures are widely viewed as essential to consideration of certain complex international trade agreements to which the United States may become a party.

The present bill follows the model of past fast track legislation, with certain modifications to reflect new priorities and objectives, as well as an increased emphasis on consultation by the President with Congress at all phases of trade agreement negotiation. As under past fast track legislation, the present bill sets forth a series of detailed negotiating objectives covering particular sectors, such as agriculture and services, and issues that cut across sectors, such as dispute settlement and transparency in the institutions that regulate international trade. Next, the bill sets forth the conditions under which trade agreement implementing legislation will be eligible for consideration under fast track procedures. Generally, the President must make progress toward achieving the relevant objectives set forth in the bill and explain how he has done so. Further, the President must consult with Congress at all phases of an agreement's negotiation.

If these conditions are met, then a bill approving a trade agreement and making only those changes to U.S. law necessary or appropriate to implement the agreement will be considered under fast track rules. Given the inability to amend legislation under fast track rules, it is important to protecting the constitutional authority of Congress that such legislation be limited to measures necessary or appropriate to implement the underlying agreement. For this reason, practice under past fast track legislation has been for the congressional Committees of jurisdiction and the President to collaborate closely on the drafting of implementing legislation before it is formally introduced. It is the Committee's expectation that this practice will be followed under the present bill.

The very nature of trade authorities procedures requires that the executive and legislative branches work hand-in-hand during international trade negotiations. Constitutionally, the power to regulate commerce with foreign nations rests squarely with the Congress. In agreeing to fast track procedures, Congress retains this power, but modifies its use. In doing so, Congress recognizes that the Constitution vests the President with the power to speak to foreign leaders with one voice, and that the international trade interests of the United States can best be promoted by negotiating international trade agreements with foreign nations. In short, trade authorities procedures represent a partnership between the legislative and executive branches of govem-

ment. By forging this partnership, Congress and the President enhance the effectiveness of their constitutionally endowed powers to serve the best interests of the American people. The foundation of this partnership is regular, detailed and frequent Presidential consultation with Congress.

Recognizing the importance of congressional-executive consultation on trade negotiations, Congress set forth certain consultation requirements in the same legislation that contained the original fast track provisions. Section 161 of the Trade Act of 1974 requires the Speaker of the House of Representatives and the President pro tempore of the Senate to designate congressional advisers for trade policy and negotiations at the beginning of each regular session of Congress. These advisers consist of five members of the House Committee on Ways and Means and five members of the Senate Committee on Finance, as well as certain members that the Speaker and President pro tempore may designate from other Committees, according to the subject matter under negotiation. These advisers are tasked with providing "advice on trade policy and priorities for the implementation thereof." They are to be "accredited by the United States Trade Representative on behalf of the President as official advisers to the United States delegations to international conferences, meetings, and negotiating sessions relating to trade agreements."

The Trade Representative is required to keep the congressional advisers currently informed on matters affecting trade policy, possible trade negotiations, and ongoing trade negotiations, as well as changes to domestic law or administration of the law that may be required by trade agreements. Section 161 requires similar consultations with the Ways and Means Committee and Finance Committee, as well as other appropriate Committees of Congress.

The present bill adds to the trade policy consultation requirements in several important respects. It establishes a special Congressional Oversight Group, in addition to the congressional trade advisers designated under section 161 of the Trade Act. The Group will consist of Members of the Ways and Means and Finance Committees, as well as Members of other Committees with jurisdiction over laws that may be affected by ongoing negotiations. Like the advisers under section 161, Members of the Oversight Group will be accredited as official advisers to the U.S. delegation in trade negotiations. To ensure their ability to fulfill this role effectively, the present bill requires the Trade Representative, in consultation with the Chairmen and Ranking Members of the Finance and Ways and Means Committees, to develop written guidelines

for consultations with the Oversight Group.

Additionally, the present bill contains special notice and consultation requirements regarding negotiations and proposed negotiations on particular subjects, including import-sensitive agricultural products, fish and shellfish, textiles, and trade remedy laws (i.e., antidumping, countervailing duty, and safeguards laws).

The Committee recognizes that fast track procedures have facilitated the negotiation of important trade benefits for the United States. Trade agreements approved and implemented under fast track procedures have led to the opening of markets for U.S. manufactured goods, agricultural products, and services, the establishment of international disciplines on an array of practices affecting U.S. trade relations with foreign countries, and the adoption of rules fostering an environment conducive to foreign investment by U.S. individuals and businesses. The Committee believes that enactment of the Bipartisan Trade Promotion Authority Act of 2002 will promote U.S. leadership in trade policy, and enable the United States to expand on the benefits achieved under previous fast track legislation, while preserving strong and effective roles for both the legislative and executive branches of government in trade policy making.[11]

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[11] S. REP. NO. 107-139, at 1-4 (2002).

SIGNING STATEMENT ON THE TRADE ACT OF 2002

President Bush made the following remarks on signing the Trade Act of 2002:

Remarks on Signing the Trade Act of 2002
August 6, 2002

Well, thank you all very much for that warm welcome. Welcome to the people's house, as we celebrate a victory for the American economy. Last week, the United States Congress passed trade promotion authority and renewed an expanded the Andean Trade Preference Act.

Trade is an important source of good jobs for our workers and a source of higher growth for our economy. Trade is an important source of earnings for our farmers and for our factories. It creates new opportunities for our entrepreneurs. Trade expands choices for America's consumers and raises living standards for our families. And now, after eight years, America is back in the business of promoting open trade to build our prosperity and to spur economic growth.

I appreciate so very much Vice President Cheney's hard work on this issue. I appreciate Colin Powell and Ann Veneman, who ably serve in my Cabinet. I want to particularly thank Don Evans, who's not with us, and Bob Zoellick, members of my Cabinet who both worked tirelessly to get the vote in the House and then in the Senate. And I appreciate Elaine Chao as well. These Cabinet secretaries worked hard for trade. They understand the promise of trade, and I appreciate their hard work on behalf of American workers and farmers.

I particularly want to thank the members of Congress who are here with us, starting with the Chairman of the Senate Finance Committee, the senator from Montana, Max Baucus. Max did fantastic work to get this trade bill through the Senate. And was then able to work with Chairman Thomas. [*Laughter*] Chairman Thomas was heroic in the House. He was steadfast in his support for trade and I appreciate his leadership on this issue. And I want to thank both members of the United States Congress, one Democrat, one Republican, who put their country ahead of their parties to do what was right for the people of this country. You

two deserve a lot of congratulations. I want to thank Senator Hatch, who was a conferee and a member of the Finance Committee. Thanks for coming, Senator. I want to thank my fellow Texan, Tom DeLay, the best vote-counter in the history of the United States Congress. [*Laughter*] After all, he was able to triple — [*laughter*] — the vote margin on final passage. I appreciate so very much Cal Dooley, and a guy I call "Jeff", William Jefferson, Congressmen from California and Louisiana. And I want to thank them for their work as well. They led the Democrats in the House of Representatives, many of whom are here today, to do what's right for our country. And again, I appreciate your leadership and I appreciate your work and I appreciate your help. [Applause.]

I want to thank Embajadora A-Baki from Ecuador. I want to thank you for coming. I also want to thank Carlos Alzamora from Peru, and all the other ambassadors who are here. I want to appreciate you — appreciate your hard work on sending the message of trade to members of our Congress. I want to thank you for your diligence, and I want to thank your Presidents for their care and concern about this incredibly important initiative — not only for Americans, but for workers all around the world. Thank you all for coming.

With trade promotion authority, the trade agreements I negotiate will have an up-or-down vote in Congress, giving other countries the confidence to negotiate with us. Five Presidents before me had this advantage, but since the authority elapsed in 1994, other nations and regions have pursued new trade agreements while America's trade policy was stuck in park. With each passing day, America has lost trading opportunities, and the jobs and earnings that go with them. Starting now, America is back at the bargaining table in full force.

I will use trade promotion authority aggressively to create more good jobs for American workers, more exports for American farmers, and higher living standards for American families. Free trade has a proven track record for spurring growth and advancing opportunity for our working families. Exports accounted for roughly one-quarter of all U.S. economic growth in the 1990s. Jobs in exporting plants pay wages that are up to 18 percent higher than jobs in non-exporting plants. And our two major trade agreements, NAFTA and the Uruguay Round, have created more choices and lower prices for consumers, while raising standards of living for the typical American family of four by $2,000 a year.

America will build on this record of success. A completely free

global market for agricultural products, for example, would result in gains of as much as $13 billion a year for American farmers and consumers. Lowering global trade barriers on all products and services by even one-third could boost the U.S. economy by $177 billion a year, and raise living standards for the average family by $2,500 annually. In other words, trade is good for the American people. And I'm going to use the trade promotion authority to bring these benefits to the American people.

Free trade is also a proven strategy for building global prosperity and adding to the momentum of political freedom. Trade is an engine of economic growth. It uses the power of markets to meet the needs of the poor. In our lifetime, trade has helped lift millions of people, and whole nations, and entire regions, out of poverty and put them on the path to prosperity. History shows that as nations become more prosperous, their citizens will demand, and can afford, a cleaner environment. And greater freedom for commerce across the borders eventually leads to greater freedom for citizens within the borders.

The members of the diplomatic corps with us today understand the importance of free trade to their nations' success. They understand that trade is an enemy of poverty, and a friend of liberty. I want to thank the ambassadors for their role in getting this bill passed, especially the Andean ambassadors who are such strong advocates for the Andean Trade Preference Act. By providing trade preference for products from four Andean democracies, we will build prosperity, reduce poverty, strengthen democracy, and fight illegal drugs with expanding economic opportunity.

Trade promotion authority gives the United States an important tool to break down trade barriers with all countries. We'll move quickly to build free trade relationships with individual nations, such as Chile and Singapore and Morocco. We'll explore free trade relationships with others, such as Australia. The United States will negotiate a Free Trade Area of the Americas, and pursue regional agreements with the nations of Central America and the Southern Africa Customs Union. We'll move forward globally, working with all nations to make the negotiations begun last year in Doha a success. A little more than a week ago, the United States put forward a far-reaching proposal to lower worldwide agricultural trade barriers. These innovative set of ideas can lead to real progress in this challenging area.

Trade gives all nations the hope of sharing in the great economic, and

social, and political progress of our age. And trade will give American workers the hope that comes from better and higher-paying jobs. America's committed to building a world that trades in freedom and grows in prosperity and liberty. Today, we have the tools to pursue that vision, and I look forward to the work ahead.

And now it's my honor and pleasure to sign into law the Trade Act of 2002.[12]

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[12] Remarks on Signing the Trade Act of 2002, WEEKLY COMP. PRES. DOC. 1317-19 (Aug. 6, 2002) <http://www.whitehouse.gov/news/releases/2002/08/20020806-4.html>.

TRADE ACT OF 1974

CHAPTER 5
CONGRESSIONAL PROCEDURES WITH RESPECT TO PRESIDENTIAL ACTIONS

§ 151

SEC. 151.[13] BILLS IMPLEMENTING TRADE AGREEMENTS ON NONTARIFF BARRIERS AND RESOLUTIONS APPROVING COMMERCIAL AGREEMENTS WITH COMMUNIST COUNTRIES.[14]

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[13] Section 151 is codified as amended at 19 U.S.C. § 2191. Section 2103(b)(3) of the Trade Act of 2002 applies the procedures set forth in section 151 to implementing bills described in section 2103(b)(3). *See infra* p. 202.

[14] The joint statement of managers accompanying the conference report on the Trade Act of 1974 explained the section generally:

> Amendments Nos. 159, 160, 161, and 162: Section 151 of the bill as passed by the House contained a procedure for congressional disapproval with respect to nontariff barrier trade agreements submitted to Congress, to escape clause actions to retaliation against unfair trade practices, and to extension or continuation of nondiscriminatory tariff treatment. Under this procedure, the President was to transmit a proclamation or agreement to the Congress, after 7 days it was in order to discharge the committee to which a resolution of disapproval had been referred, and, if either House approved the resolution of disapproval within a 90-day period, the agreement or proclamation was not to take effect.
>
> The Senate amendments strike out section 151 of the House bill and insert new sections 151, 152, and 153. Under these amendments, a congressional approval procedure applies to all nontariff barrier trade agreements, to agreements establishing certain principles in international trade (including GATT revisions) which change federal law (including a material change in an administrative rule), and to bilateral trade agreements with nonmarket countries entered into after the date of the enactment of the bill. Under this procedure, an implementing bill or approval resolution is submitted by the President and introduced in each House (with no amendments permitted), time limits are established for committee consideration, and floor votes. If the bill is not enacted or the resolution is not approved as the case may be, the agreement or revision cannot enter into force.
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> . . . .

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. . . . The House recedes with clarifying and conforming amendments.

H.R. REP. NO. 93-1644, as 32-33 (1974).

The Senate Finance Committee report on what would become the Trade Act of 1974 states with regard to this section generally:

CHAPTER 5. CONGRESSIONAL PROCEDURES WITH RESPECT TO PRESIDENTIAL ACTIONS

BILLS IMPLEMENTING TRADE AGREEMENTS ON NONTARIFF BARRIERS AND RESOLUTIONS APPROVING COMMERCIAL AGREEMENTS WITH COMMUNIST COUNTRIES

(Section 151)

The Committee believes that all nontariff barrier agreements negotiated pursuant to Title I and all commercial agreements negotiated under Title IV (except for the U.S.-U.S.S.R. agreement) should be subject to the approval of both Houses of Congress before they take effect with respect to the United States. Accordingly, the bill would require that all nontariff barrier agreements under Section 102 and agreements with communist countries pursuant to section 405 be approved by a majority vote of both Houses of Congress, rather than by the legislative veto procedure recommended in the House bill, before such agreement(s) could enter into force for the United States, both internationally and with respect to domestic law. Virtually all nontariff barriers in the United States are matters of law. If the Congress were to delegate to the President the power to change domestic law, subject only to a Congressional veto, it would not only be a reversal of the constitutional roles of the legislative and executive branches, but also an abrogation of legislative responsibilities.

The Committee recognizes, however, that such agreements negotiated by the Executive should be given an up-or-down vote by the Congress. Our negotiators cannot be expected to accomplish the negotiating goals of Title I if there are no reasonable assurances that the negotiated agreements would be voted up-or-down on their merits. Our trading partners have expressed an unwillingness to negotiate without some assurances that the Congress will consider the agreements within a definite time-frame. The Committee is quite aware, however, that some of these countries do not have advance authority themselves to change their own domestic laws and regulations without parliamentary approval. In establishing the procedures described below, the Committee hopes that other major negotiating partners will also establish procedures to deal expeditiously with nontariff barrier agreements affecting domestic laws and regulations.

Under the Committee bill there is virtual assurance that a nontariff barrier agreement or bilateral commercial agreement with a communist nation which enters into such agreement after the passage of this bill would be voted on, on its merits, within 60 days during which each House considering the implementing legislation is in session (or, in the case of a revenue bill, which must originate in the House, within 90 days).

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There would be one exception to the affirmative approval procedures for agreements with communist countries. Section 407 provides that any agreement entered into before passage of the bill and any proclamation implementing such an agreement, would take effect unless it is the subject of a disapproval resolution adopted by either House of Congress by the majority of those voting. This exception has been made to allow implementation of the U.S.-Soviet agreement concluded in 1972. All other agreements concluded pursuant to the authority of Section 405 (and the extension of nondiscriminatory treatment pursuant to Section 404) would be subject to affirmative approval under the procedures of this section.

. . . .

The Committee believes that the combination of approval and disapproval procedures provided in Chapter 5 of Title I would provide sufficient assurances that the Congress will consider agreements negotiated by the Executive on their merits, and yet preserve intact the essential Constitutional responsibilities of the Congress to regulate commerce with foreign nations. There is no question, however, that the soundness of this judgment depends on how well the President's negotiators carry out the purposes of this legislation to achieve equity and fairness for United States commerce in international trade, and how closely the negotiators work with the Congress throughout these negotiations. They must not only keep a select few members informed; they must work to gain the confidence and respect of all members, as well as keeping members fully informed.

S. REP. NO. 93-1298, at 107-08, 111 (1974).

The House Ways and Means Committee report on what would become the Trade Act of 1974 states with regard to its differing, earlier conception of how these procedures would work:

E. Congressional Disapproval Procedures With Respect to Presidential Actions

Due to the unique nature of nontariff barriers and other distortions of trade including their relationship to domestic law and the problems of the implementation of trade agreements providing for their reduction or elimination, it has been difficult to develop appropriate trade agreement authority in this area. The President, in his trade proposals embodied in H.R. 6767, proposed a procedure encompassing review and possible congressional veto of trade agreements submitted by the President to the Congress when he determined further congressional action for the implementation of such trade agreements was necessary.

In considering the President's proposal on nontariff barriers, the committee determined that it would be constitutionally more appropriate that the Congress authorize the President to enter into trade agreements providing for the reduction or elimination of nontariff barriers and other distortions under specific guidelines, since the implementation of such trade agreements often involved other domestic legislation. The committee also has considerably tightened the provision with respect to congressional

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§ 151(a) **(a) RULES OF HOUSE OF REPRESENTATIVES AND SENATE. — This section and sections 152[15] and 153[16] are enacted by the Congress —**

§ 151(a)(1) **(1) as an exercise of the rulemaking power[17] of the House**

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[14](...continued)
disapproval procedure for agreements negotiated and presented to the Congress, and for proposals for their implementation. Consultations with the appropriate committees are required, including the Committee on Ways and Means in the House and the Committee on Finance in the Senate. Moreover, it is envisaged that there will be continuing consultations with the congressional delegation to the negotiations as provided in section 161 of the bill.

In developing the procedures for congressional consideration of trade agreements respecting nontariff barriers, the committee determined that in a number of other instances authorities granted to the President might also be subject to the same procedures for possible disapproval. Thus, in addition to the procedures for disapproving nontariff barrier agreements, the bill provides that such procedures will be used with respect to: (*a*) actions the President might take with respect to import quotas and orderly marketing agreements under section 203, (*b*) actions the President might take with respect to unfair trade practices under section 301 and, (c) findings the President might make and actions the President might take with respect to the extension of or continuation of nondiscriminatory treatment to the products of certain state trading countries.

The bill, therefore, provides for the consideration of resolutions disapproving the entering into trade agreements on distortions of trade or disapproving certain other actions as discussed above. . . .

. . . .

If, at the end of 90 days after the date which a document referred to in sections 102(f), 204(b), 302(b), or 406(a) or (b) has been transmitted to the Congress, neither House has acted favorably on a motion to disapprove of the action proposed to be taken by the President, such action will become effective.

H.R. REP. NO. 93-571, at 41-44 (1973).

[15] *See infra* p. 123.

[16] *See infra* p. 149.

[17] The Constitution provides: "Each House may determine the Rules of its Proceedings . . . ." U.S. CONST. art. I, § 5, cl. 2. The provisions of section 151(a) are thus a
(continued...)

of Representatives and the Senate, respectively, and as such they are deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of implementing bills described in subsection (b)(1),[18] implementing revenue bills described in subsection (b)(2),[19] approval resolutions described in subsection (b)(3),[20] and resolutions described in subsections 152(a)[21] and 153(a)[22]; and they supersede other rules only to the extent that they are inconsistent therewith; and

§ 151(a)(2) **(2) with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner and to the same extent as in the case of any other rule of that House.[23]**

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[17](...continued)
specific statement of a more general proposition. *See generally* JOHNNY H. KILLIAN & GEORGE A. COSTELLO, THE CONSTITUTION OF THE UNITED STATES OF AMERICA: ANALYSIS AND INTERPRETATION 123-24 (1992) (on "Rules of Proceedings").

[18] *See infra* p. 60.

[19] *See infra* p. 71.

[20] *See infra* p. 72.

[21] *See infra* p. 123.

[22] *See infra* p. 151.

[23] The Senate Finance Committee report on what would become the Trade Act of 1974 states with regard to Congress's exercise of the rulemaking power:

> *Section 151(a). Rules of the House of Representatives and Senate.* — The procedures for approval of bills implementing nontariff barriers or resolutions approving trade agreements with Communist countries would be an exercise of the rule-making power of each House; they would supersede the rules of each House only to the extent they are inconsistent with such rules. Furthermore, these procedures would be subject to change in either House, at any time, in the same manner and to the same extent as other rules of each House.

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[23](...continued)
S. REP. NO. 93-1298, at 108 (1974).

The House Ways and Means Committee report on what would become the Trade Act of 1974 states with regard to Congress's exercise of the rulemaking power:

> Section 151(a) of the bill provides that chapter 5 of title I of the bill is enacted by the Congress (1) as an exercise of the rulemaking power of the House and the Senate, respectively, and as such, such rules are deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of resolutions described in section 151 (and supersede other rules only to the extent that they are inconsistent therewith) and (2) with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner and to the same extent as in the case of any other rule of that House.

H.R. REP. NO. 93-571, at 108 (1973).

Section 2105(c) of the Trade Act of 2002 sets forth a similar provision. *See infra* p. 282. The Senate Finance Committee report on the Trade Act of 2002 states with regard to Congress's exercise of the rulemaking power:

> Section 5(c) affirms that the foregoing procedures for adopting a disapproval resolution — as well as the procedures described in section 3(c) for adopting a resolution disapproving the extension of trade authorities procedures after June 30, 2005 — are enacted pursuant to the rule-making powers of the House of Representatives and the Senate. It further recognizes the constitutional right of either House to change its rules at any time.
>
> Section 5(c) simply confirms what is the case under Article I, section 5, clause 2 of the Constitution of the United States, which provides that "[e]ach House may determine the Rules of its Proceedings. . . ." Because the rules of proceedings in each House are determined by that House and do not require the consent of the other Chamber, each House may change its rules independently of the will of the other Chamber. Thus, if the Senate, by simple resolution, for example, chose to withdraw trade authorities procedures with respect to a particular agreement, it could do so, notwithstanding the failure of the House of Representatives to adopt an identical resolution within the 60-day period prescribed by section 5(b). The House's failure to act would not preclude the Senate from withdrawing trade authorities procedures by virtue of its simple resolution. Historically, when fast track legislation has been in place for trade agreements, neither House has ever acted unilaterally to withdraw application of fast track procedures.

S. REP. NO. 107-139, at 54 (2002).

Congressional Research Service Specialist in the Legislative Process Richard Beth has expounded on means by which Congress could exercise its rulemaking power to change these fast-track provisions:

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Congress could enforce the other limitations on the eligibility of trade agreements for expedited consideration by using the constitutional authority of each house to make its own rules. First, in principle, the chair might rule that an implementing bill did not meet the statutory requirements for expedited consideration. Second, each house has procedural means for either altering the procedures applicable to any implementing bill, or considering an alternative measure instead. Finally, either house could at any time permanently amend the statutory expedited procedures, just as with any other procedural rules. These capacities afford Congress the ultimate ability to recover its full legislative discretion over the implementation of any trade agreement.

. . . .

Using the Rulemaking Power to Enforce Limits on Trade Promotion Authority

Rulemaking Authority of Congress

Even though Congress limited the scope of the trade promotion authority by imposing these substantive restrictions and informational requirements, it might still conclude that the terms of a specific nontariff trade agreement did not appropriately reflect its intent. The statutory expedited procedure might require Congress to consider the implementing bill under constraints on its discretion that it would find inappropriate for that specific situation. Congress, however, possesses several means of avoiding a dilemma of this kind. By these means it would be able to override the statutory expedited procedure and recover its normal legislative prerogatives for consideration of legislation implementing trade agreements.

The key to all of these mechanisms is that, although the expedited procedure for trade is prescribed in statute, its provisions operate as procedural rules of the House or Senate. Under the Constitution, each house possesses full authority to determine its own internal rules, including the power to alter or supersede these rules by its own action. This constitutional rulemaking authority permits each house to adopt and amend its rules by a simple resolution (a measure acted on only by the house to which it applies).

Expedited procedures, however, including the one for trade agreements, are enacted in law, which, under the Constitution, requires the joint action of both houses and the President. As a practical matter, expedited procedures may often need to be established in this way, because they affect the prerogatives of all three institutions, and each may be willing to accept the effects only as part of an overall accommodation among all. Nevertheless, expedited procedures regulate proceedings in each house (on the measures they apply to) in just the same way as do the general rules of each. To enact these procedures in statute therefore seems to give authority over rules of each house to the President and the other house, neither of whom has any constitutional claim to this authority.

To resolve this difficulty, when a law contains provisions that operate as congressional rules, it typically also includes a declaration that these provisions are

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enacted "as an exercise of the rulemaking power" of each house. The declaration asserts that, for this reason, each house retains the constitutional right to change those rules "(so far as relating to the procedure of that House) at any time, in the same manner and to the same extent as in the case of any other rule of that House." [Footnote: Specific language quoted is that of Section 151(a) of the Trade Act of 1974 (19 U.S.C. 2191), covering Sections 151-153 of that Act (19 U.S.C. 2191-2193). . . . Note that these declarations do not cover the provisions setting conditions for the use of these procedures, which require actions by the executive and not only by Congress.] These declarations affirm the authority of each house to treat rulemaking provisions in the same way as other rules, and alter them by its own sole action, even though they were established by statute. [Footnote: These declarations assert the ability of either chamber of Congress, acting alone, to overturn certain provisions of statute. In *I.N.S.* v. *Chadha,* 462 U.S. 919 (1983), the Supreme Court held that authority granted pursuant to statute could be rescinded or overridden only by a further statutory enactment, and that Congress could not provide for results like those to arise from action by one or both chambers alone. That Congress continues to use the device of the rulemaking statute suggests that it considers this mechanism not to violate the *Chadha* doctrine, because the mechanism governs only procedures that regulate the internal operations of Congress itself, and therefore rests not at all on the legislative power of Congress, but on its rulemaking power instead.] Provisions enacted under declarations like these are sometimes called "rulemaking provisions" of statute.

Forms of Control Through the Rulemaking Authority

Congress possesses several ways of invoking its general rulemaking authority to change, suspend, or determine the applicability of the rulemaking provisions of statute that make up the expedited procedure for trade agreements. One has already been discussed: the establishment of additional expedited procedures, as in Section 152 of the Trade Act of 1974, which governs the consideration of extension disapproval resolutions and procedural disapproval resolutions. These mechanisms permitted Congress to adjust the availability of the trade agreement negotiating authority to reflect its judgment of how the authority was being used.

Each house may also supersede or override the rulemaking provisions of law that make up the expedited procedure for trade agreements by use of its general constitutional rulemaking authority in several other ways. The following sections discuss some of these additional forms in which Congress exercises its rulemaking powers, including:

- making procedural decisions about whether the procedures established by rulemaking provisions of law apply in a specific situation, or to a specific measure;

- considering an implementing bill, though qualified for consideration under the Section 151 rulemaking provisions, under procedures different from those specified by the rulemaking provisions;

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- determining to act, not on an implementing bill qualified for consideration under the Section 151 rulemaking provisions, but instead on some other legislation that would have the effect of implementing the same trade agreement; or

- adopting general changes in those rulemaking provisions of law through subsequent action by resolution or subsequent rulemaking statute.

Determining Application of Rules

The authority of each house over its own rules fundamentally includes the power not only to establish and alter rules, but also the ability to determine in what situations the rules apply. Congress could use this ability as a means to enforce some of the restrictions it places on the trade promotion authority. . . . [F]or example, the President might have negotiated a nontariff trade agreement for which he neither gave the required 90 days notice of signing nor submitted the required supporting documentation along with the implementing bill. If any Member moved that the chamber consider a bill to implement this trade agreement, another Member might raise a point of order that Section 151 makes the motion privileged only on measures for which the required notification and documentation are provided. If the chair sustained this point of order, the measure in question could not be considered under the expedited procedures, on the grounds that Section 151 did not qualify it for such consideration.

Although the expedited procedure for trade does not explicitly establish any point of order of this kind, raising it would presumably be in order as an exercise of the general power of each house over its own rules. Action of this sort would likely also be effective in enforcing the limitations established by Congress on the trade promotion authority. . . .

In principle, this way of applying the rulemaking power might also enable the chamber to enforce the statutory requirements of the trade promotion authority, which are not themselves rulemaking provisions. Leaders of one of the revenue committees, for example, might wish not to consider a specified implementing bill under the expedited procedures, because the trade agreement in question did not advance objectives specified for the trade promotion authority. In cases of this kind, however, the only way in which the chair could rule on whether an implementing bill met the requirements of the rulemaking provisions of Section 151 would be by making determinations about whether the agreement itself met the conditions placed on the trade promotion authority. Because the provisions defining these objectives are not rulemaking provisions, these determinations would have to rest on substantive information about trade policy to which the chair would lack authoritative access.

For this reason, points of order of this kind would in practice not likely be raised on the floor, at least in the House of Representatives. Instead, in advance of considering the implementing bill, the House would likely adopt a special rule waiving the point of order. By doing so, the House would preserve the qualification of the bill for expedited consideration. Alternatively, the House might adopt a special rule providing that the bill

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be considered under procedures other than fast track. This action would prevent expedited consideration of the bill, just as would sustaining the point of order. These options permit each chamber to reach the same alternative outcomes as would the point of order, but convert the choice between outcomes from a procedural decision to a political one.

Altering Procedure for Individual Measures

It is also well established that the rulemaking power extends to actions by which either house authorizes exceptions to its rules (including rulemaking provisions of statute), or otherwise alters the application of rules to specific cases. For this reason, although the Trade Act made the expedited procedure for trade agreements available for the implementing bills it covers, it could not compel either house to consider these bills under this procedure. Pursuant to its constitutional rulemaking authority, either house could have suspended or denied the application to a specific implementing bill either of the expedited procedure as a whole, or of individual features of that expedited procedure. It could do so while still retaining in force the existing expedited procedure for trade generally.

The Senate most commonly exercises this form of authority over its rules through action by unanimous consent. The House also may take such action by unanimous consent, but more commonly does so by adopting a "special rule," a device that has no Senate counterpart. [Footnote: In principle, either house could take action of this kind also by means of a motion to suspend the rules. The Senate, however, rarely makes use of this motion, and the House would probably be unlikely to do so for these purposes.]

The Senate often adopts unanimous consent agreements establishing comprehensive terms for considering a specified measure. These terms then altogether supersede those of the general rules, to the extent of any conflict. If unanimous consent could be obtained for the purpose, the Senate could decide to take up an implementing bill, not pursuant to Section 151 at all, but instead under whatever other terms the unanimous consent agreement provided. By unanimous consent, the Senate could also set aside specified individual features of the expedited procedure. It could, for example, take up an implementing bill by unanimous consent rather than by the privileged motion provided in the statute. It could also extend or reduce the time available for debate on the measure or on specified motions or other questions, permit the offering of a motion that Section 151 precludes, etc.

Probably the only feature of the expedited procedure that the Senate could not alter by unanimous consent is the prohibition on amendments. The chair could entertain no such request for unanimous consent, because Section 151 prohibits action to supersede the prohibition on amendment. The Senate might still permit amendments by tacit unanimous consent: if no Senator were to raise a point of order to enforce this (or any other) requirement of the expedited procedure, the Senate could consider the measure while ignoring that requirement. Also, if the Senate took up an implementing bill pursuant to a comprehensive unanimous consent agreement rather than under the expedited procedure, the prohibition on amendment contained in that expedited

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procedure presumably would not apply.

In the House, special rules, which are resolutions setting terms for the consideration of a specified measure, are reported by the Committee on Rules and adopted by simple majority vote. The House normally limits debate on a special rule to one hour, and precludes its amendment, by ordering the previous question. By use of this device, the House could at any time determine to take up an implementing bill, and consider it under terms providing whatever latitude for its debate and amendment the Committee on Rules finds appropriate and a majority is willing to accept. In principle, the House also might set aside individual provisions of the expedited procedure (except the prohibition on amendment) by unanimous consent, but in practice, it would less likely be able to obtain unanimous consent for such a purpose.

Typically, the House could be expected to take up an implementing bill pursuant to a special rule rather than under the expedited procedure. By affording consideration of the bill under a special rule, instead of pursuant to the privileged motion to proceed, the leadership would retain its normal control of the floor agenda. The House would also avoid having to have the chair determine substantive questions about whether the trade agreement met the requirements of the trade promotion authority through nominally procedural decisions about the eligibility of the implementing bill for consideration under Section 151.

Considering Alternative Measures under General Rules

The constitutional rulemaking power also permits each house always to recover its effective freedom of choice in legislation by circumventing the expedited procedure altogether. Several means exist for each house to exercise this capacity. First, although Section 151 protects the motion to consider an implementing bill, it does not require any Member to offer this motion, and cannot require either house to adopt it. To this extent, Congress retains its usual discretion not to act.

Second, the availability of the statutory expedited procedure for implementing bills cannot prevent either house from considering some other measure that might deal with the same subjects. After the President has submitted a draft implementing bill, or even before then, the revenue committee in either chamber could report a measure dealing with the same matters, but containing different provisions. This chamber could take up, amend, and pass this alternative, instead of acting on the implementing bill prescribed by the Trade Act. The House would most likely take this kind of action pursuant to a special rule, which probably would also provide that the original implementing bill not be considered. The Senate, again, would most readily achieve similar results by unanimous consent.

Even if the other house subsequently acts on the original implementing bill under the expedited procedure, the first house could ask for a conference on the differences between the original bill and its own, and the conference could report a new version of the bill, which both chambers might accept. Despite the intent of the expedited procedure, this way of using the congressional rulemaking power could result in the

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President's being faced with the choice of signing a measure implementing terms different from those negotiated, or, by vetoing it, risking that no legislation on the subject be enacted.

Third, even if Congress enacted an implementing bill without amendment, pursuant to the expedited procedures, the action would not vitiate the authority of Congress to enact subsequent legislation amending, or altering the terms of, that law. Congress could use this authority to enact subsequent amendments to the implementing legislation. By this means, Congress could act in accordance with the expedited procedure, yet also continue to exercise its full legislative discretion on the subjects covered.

The President could, of course, attempt to prevent the subsequent enactment by veto. Also, Congress might for prudential reasons hesitate to use this course of action, which could have serious effects on the international negotiating credibility of the United States, and on relations with its trading partners. Yet no constraints that an expedited procedure statute may place on congressional discretion with respect to specified measures can ultimately displace the normal authority of Congress to initiate and consider legislation. The possibility of using this authority constitutes the ultimate, inalienable means whereby Congress is able to avoid being constrained by the alternatives to which an expedited procedure statute attempts to restrict it.

General Changes in Rules

Finally, either house may at any time use its rulemaking authority explicitly to repeal or alter any of the rulemaking provisions defining the expedited procedure for trade agreements (or the procedure for extension and procedural disapproval resolutions). For example, either house could alter the procedures established by Section 151 so as to permit amendments to be offered to implementing bills.

Normally, either chamber alters provisions of its rules, including rulemaking provisions of statute, by simple resolution. The procedure for considering a resolution for this purpose, however, differs between the House and Senate. The House may normally consider a resolution to change rules only when it is reported from the Committee on Rules. The House can limit debate on the resolution to one hour, and preclude amendment, by ordering the previous question. The Committee on Rules normally operates in cooperation with the leadership of the majority party, and can usually secure the support of that party for the previous question. As a result, changes in House rules are normally within the control of the Committee on Rules and the House majority leadership.

Proposals to change Senate rules, similarly, would normally be reported from the Committee on Rules and Administration, and reach the floor only on motion of the leadership of the majority party. The Senate, however, normally can limit debate only by unanimous consent or by obtaining a super-majority vote for cloture, and preclude the offering of amendments only by unanimous consent. Under these conditions, a minority might be able to use dilatory tactics to prevent a vote on a change in a

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rulemaking statute. For this reason, although procedure is generally more flexible in the Senate than in the House, the Senate may be less readily able than the House to alter a rule that it has once established.

Each house could apply its rulemaking authority in this way to the provisions making up the expedited procedure for trade, which are rulemaking provisions, but not to change the provisions defining the trade promotion authority, which are not. Neither house, in other words, could use its power over its own rules to make unilateral changes in provisions of law that define the scope of the negotiating authority.

Yet either house might achieve the same result indirectly, by changing the provisions of Section 151 that determine whether an implementing bill qualifies for expedited consideration. This section specifies some requirements for an implementing bill directly, and incorporates others by reference to the conditions defining the negotiating authority. Accordingly, if either house of Congress wished to narrow or broaden the range of legislation to which the expedited procedure would apply, it could rewrite these provisions of Section 151 to alter the conditions under which a bill would qualify for this procedure. It might, for example, amend Section 151 to provide that a bill to implement a trade agreement fostering certain objectives was not an "implementing bill" within the meaning of the expedited procedure, even though the trade promotion authority continued to specify these objectives as ones that nontariff trade agreements could pursue.

RICHARD S. BETH, TRADE AGREEMENT IMPLEMENTATION: EXPEDITED PROCEDURES & CONGRESSIONAL CONTROL IN EXISTING LAW, at summary & 15-21 (Nov. 26, 2001) (Cong. Res. Serv. no. RL31192) (some footnotes omitted) <http://www.congress.gov/erp/rl/pdf/RL31192.pdf>.

Motion to Suspend the Rules

Senate Standing Rule V provides for the suspension of the Rules. That rule provides (in part):

"No motion to suspend, modify, or amend any rule, or any part thereof, shall be in order, except on one day's notice in writing, specifying precisely the rule or part proposed to be suspended, modified, or amended, and the purpose thereof. Any rule may be suspended without notice by the unanimous consent of the Senate, except as otherwise provided by the rules."

Senate Rule V <http://rules.senate.gov/senaterules/rule05.htm>.

By precedent, suspension of the rules requires the vote of two-thirds of the Senators present, a quorum being present. ALAN S. FRUMIN, RIDDICK'S SENATE PROCEDURE 1271 (1992) ("Suspension of Rules") <http://www.gpoaccess.gov/riddick/1266-1272.pdf>.

There appears to be no precedent demonstrating the actual use of a motion to suspend the rules, under Senate Standing Rule V, to alter procedures under a public law enacted pursuant to the Senate (and House) rule-making power providing special procedures such as fast track and

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§ 151(b) **(b) DEFINITIONS. — For purposes of this section —**

§ 151(b)(1) **(1) The term "implementing bill"[24] means only a bill of**

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prohibition on amendment. In June of 2005, the Parliamentarian's office advised that discussions in ALAN S. FRUMIN, RIDDICK'S SENATE PROCEDURE 1266, 1271 (1992) ("Suspension of Rules") <http://www.gpoaccess.gov/riddick/1266-1272.pdf>, indicate that such suspension motions would be in order. The precedent cited there, on April 22, 1985, involved filed notices of suspension to allow amendments to joint resolutions on paramilitary operations in Nicaragua, otherwise not amendable as provided for under Public Law 98-473.

Riddick's says:

> "An amendment offered to a measure which by the provisions of public law was to be unamendable, but which might be called up by a suspension of the rules, need not be germane to the measure proposed.
>
> ". . . .
>
> "On one occasion, four notices were filed of intention to move to suspend that portion of the rules contained in a public law which had been enacted as an exercise of the rulemaking power of Congress and which by its own provisions was deemed a part of the rules of each House."

ALAN S. FRUMIN, RIDDICK'S SENATE PROCEDURE 1266, 1271 (1992) ("Suspension of Rules") <http://www.gpoaccess.gov/riddick/1266-1272.pdf>.

Riddick's cites 131 CONG. REC. 8618 (Apr. 22, 1985).

Under the Trade Act section 151(d), motions to suspend the rules to allow amendment are specifically prohibited in the House or Senate. *See infra* p. 81. But under the logic of suspending the rules, the Senate could suspend the prohibition of section 151(d) itself.

[24] Implementing bills have included:

United States-Oman Free Trade Agreement Implementation Act, H.R. 5684, 109th Cong. (2006); S. 3569, 109th Cong. (2006); Pub. L. No. 109-283, 120 Stat. 1191 (Sept. 26, 2006);

United States-Bahrain Free Trade Agreement Implementation Act, H.R. 4340, 109th Cong. (2005); S. 2027, 109th Cong. (2005); Pub. L. No. 109-169, 119 Stat. 3581 (Jan. 11, 2006);

Dominican Republic-Central America-United States Free Trade Agreement Implementation Act (CAFTA), H.R. 3045, 109th Cong. (2005); S. 1307, 109th Cong. (2005); Pub. L. No. 109-53, 119 Stat. 462 (Aug. 2, 2005);

United States-Morocco Free Trade Agreement Implementation Act, H.R. 4842, 108th Cong.
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either House of Congress which is introduced as provided in subsection (c)[25] with respect to one or more trade agreements,[26] or with respect to an extension described in section

[24](...continued)
(2004); S. 2677, 108th Cong. (2004); Pub. L. No. 108-302, 118 Stat. 1103 (Aug. 17, 2004) (codified as amended at 19 U.S.C. §§ 2252 & 3805 note);

United States-Australia Free Trade Agreement Implementation Act, H.R. 4759, 108th Cong. (2004); S. 2610, 108th Cong. (2004); Pub. L. No. 108-286, 118 Stat. 919 (Aug. 3, 2004) (codified as amended at 19 U.S.C. §§ 58c, 1592, 2252, 2518, & 3805 note);

United States-Singapore Free Trade Agreement Implementation Act, H.R. 2739, 108th Cong. (2003); S. 1417, 108th Cong. (2003); Pub. L. No. 108-78, 117 Stat. 948 (Sept. 3, 2003);

United States-Chile Free Trade Agreement Implementation Act, H.R. 2738, 108th Cong. (2003); S. 1416, 108th Cong. (2003); Pub. L. No. 108-77, 117 Stat. 909 (Sept. 3, 2003) (codified as amended at 8 U.S.C. §§ 1101, 1182, 1184, 1356; 19 U.S.C. §§ 58c, 81c, 1311-1313, 1508, 1514, 1520, 1562, 1592, 2252, 3805 note);

Uruguay Round Agreements Act (URAA), H.R. 5110, 103d Cong. (1994); S. 2467, 103d Cong. (1994); Pub. L. No. 103-465, 108 Stat. 4809 (Dec. 8, 1994);

North American Free Trade Agreement Implementation Act (NAFTA), H.R. 3450, 103d Cong (1993); S. 1627, 103d Cong (1993); Pub. L. No. 103-182, 107 Stat. 2057 (Dec. 8, 1993) (codified as amended at 7 U.S.C. §§ 903 note, 1359a, 1582, 5622 note; 8 U.S.C. § 1184; 12 U.S.C. § 24; 15 U.S.C. §§ 1052, 1052 note, 1091, 2003; 17 U.S.C. §§ 104A, 109 note, 281; 18 U.S.C. § 965; scattered sections of 19 U.S.C.; 21 U.S.C. §§ 104, 105, 466, 620; 22 U.S.C. §§ 290m to 290m-3; scattered sections of 26 U.S.C.; 31 U.S.C. § 9703; 33 U.S.C. § 1908; 35 U.S.C. § 104; 42 U.S.C. § 503; & scattered sections of 46 U.S.C.);

United States-Canada Free Trade Agreement Implementation Act of 1988, H.R. 5090, 100th Cong. (1988); S. 2651, 100th Cong. (1988); Pub. L. No. 100-449, 102 Stat. 1851 (Sept. 28, 1988) (codified as amended at 19 U.S.C. § 212 note);

United States-Israel Free Trade Area Implementation Act of 1985, H.R.2268, 99th Cong. (1985); S.1114, 99th Cong. (1985); Pub. L. No. 99-47, 99 Stat. 82 (June 11, 1985) (codified as amended at 19 U.S.C. §§ 2112, 2112 notes, 2462-2464, & 2518); and

Trade Agreements Act of 1979, H.R. 4537, 96th Cong. (1979); Pub. L. No. 96-39, 93 Stat. 144 (July 26, 1979) (codified as amended at 5 U.S.C. § 5315, 13 U.S.C. § 301, scattered sections of 19 U.S.C., scattered sections of 26 U.S.C., & 28 U.S.C. §§ 1582, 2632, 2633, 2637).

[25] *See infra* p. 74.

[26] 19 U.S.C. § 1351 addresses general goals of "foreign trade agreements," and states in part:

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282(c)(3) of the Uruguay Round Agreements Act,[27]

[26](...continued)

(1) For purpose of expanding foreign markets for the products of the United States (as a means of assisting in establishing and maintaining a better relationship among various branches of American agriculture, industry, mining, and commerce) by regulating the admission of foreign goods into the United States in accordance with the characteristics and needs of various branches of American production so that foreign markets will be made available to those branches of American production which require and are capable of developing such outlets by affording corresponding market opportunities for foreign products in the United States, the President, whenever he finds as a fact that any existing duties or other import restrictions of the United States or any foreign country are unduly burdening and restricting the foreign trade of the United States and that the purpose above declared will be promoted by the means hereinafter specified, is authorized from time to time —

(A) To enter into foreign trade agreements with foreign governments or instrumentalities thereof . . . .

19 U.S.C. § 1351.

[27] Section 282(c)(3) of the Uruguay Round Agreements Act is codified as amended at 19 U.S.C. § 3572(c)(3), and states:

(3) IMPLEMENTATION OF EXTENSION. —

(A) Notification and submission. Any extension of subparagraphs (B), (C), (D), and (E) of section 771(5B) of the Tariff Act of 1930 [19 U.S.C. § 1677(5B)(B), (C), (D), and (E)] shall take effect if (and only if) —

(i) after the Subsidies Committee determines to extend Articles 6.1, 8, and 9 of the Subsidies Agreement, the President submits to the committees referred to in paragraph (2) a copy of the document describing the terms of such extension, together with —

(I) a draft of an implementing bill,

(II) a statement of any administrative action proposed to implement the extension, and

(III) the supporting information described in subparagraph (C); and

(ii) the implementing bill is enacted into law.

(B) IMPLEMENTING BILL. — The implementing bill referred to in subparagraph (A) shall contain only those provisions that are necessary or appropriate to implement an extension of the provisions of section 771(5B)(B), (C), (D), and (E) of the Tariff Act of 1930 [19 U.S.C. § 1677(5B)(B), (C), (D), and (E)] as in effect

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submitted to the House of Representatives and the Senate under section 102 of this Act,[28]

[27](...continued)

on the day before the date of the enactment of the implementing bill or as modified to reflect the determination of the Subsidies Committee to extend Articles 6.1, 8, and 9 of the Subsidies Agreement.

(C) SUPPORTING INFORMATION. — The supporting information required under subparagraph (A)(i)(III) consists of —

(i) an explanation as to how the implementing bill and proposed administrative action will change or affect existing law; and

(ii) a statement regarding —

(I) how the extension serves the interests of United States commerce, and

(II) why the implementing bill and proposed administrative action is required or appropriate to carry out the extension.

19 U.S.C. § 3572(c)(3).

[28] Section 102 of the Trade Act of 1974 is codified as amended at 19 U.S.C. § 2112, and states:

SEC. 102. NONTARIFF BARRIERS TO AND OTHER DISTORTIONS OF TRADE

(a) CONGRESSIONAL FINDINGS; DIRECTIVES; DISAVOWAL OF PRIOR APPROVAL OF LEGISLATION. — The Congress finds that barriers to (and other distortions of) international trade are reducing the growth of foreign markets for the products of United States agriculture, industry, mining, and commerce, diminishing the intended mutual benefits of reciprocal trade concessions, adversely affecting the United States economy, preventing fair and equitable access to supplies, and preventing the development of open and nondiscriminatory trade among nations. The President is urged to take all appropriate and feasible steps within his power (including the full exercise of the rights of the United States under international agreements) to harmonize, reduce, or eliminate such barriers to (and other distortions of) international trade. The President is further urged to utilize the authority granted by subsection (b) to negotiate trade agreements with other countries and instrumentalities providing on a basis of mutuality for the harmonization, reduction, or elimination of such barriers to (and other distortions of) international trade. Nothing in this subsection shall be construed as prior approval of any legislation which may be necessary to implement an agreement concerning barriers to (or other distortions of) international trade.

(b) PRESIDENTIAL DETERMINATIONS PREREQUISITE TO ENTRY INTO TRADE AGREEMENTS; TRADE WITH ISRAEL. —

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[28](...continued)

(1) Whenever the President determines that any barriers to (or other distortions of) international trade of any foreign country or the United States unduly burden and restrict the foreign trade of the United States or adversely affect the United States economy, or that the imposition of such barriers is likely to result in such a burden, restriction, or effect, and that the purposes of this Act will be promoted thereby, the President, during the 13-year period beginning on the date of the enactment of this Act [Jan. 3, 1975], may enter into trade agreements with foreign countries or instrumentalities providing for the harmonization, reduction, or elimination of such barriers (or other distortions) or providing for the prohibition of or limitations on the imposition of such barriers (or other distortions).

(2) (A) Trade agreements that provide for the elimination or reduction of any duty imposed by the United States may be entered into under paragraph (1) only with Israel.

(B) The negotiation of any trade agreement entered into under paragraph (1) with Israel that provides for the elimination or reduction of any duty imposed by the United States shall take fully into account any product that benefits from a discriminatory preferential tariff arrangement between Israel and a third country if the tariff preference on such product has been the subject of a challenge by the United States Government under the authority of section 301 of the Trade Act of 1974 [19 U.S.C. § 2411] and the General Agreement on Tariffs and Trade.

(C) Notwithstanding any other provision of this section, the requirements of subsections (c) and (e)(1) shall not apply to any trade agreement entered into under paragraph (1) with Israel that provides for the elimination or reduction of any duty imposed by the United States.

(3) Notwithstanding any other provision of law, no trade benefit shall be extended to any country by reason of the extension of any trade benefit to another country under a trade agreement entered into under paragraph (1) with such other country that provides for the elimination or reduction of any duty imposed by the United States.

(4) (A) Notwithstanding paragraph (2), a trade agreement that provides for the elimination or reduction of any duty imposed by the United States may be entered into under paragraph (1) with any country other than Israel if —

(i) such country requested the negotiation of such an agreement, and

(ii) the President, at least 60 days prior to the date notice is provided under subsection (c)(1) —

(I) provides written notice of such negotiations to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives, and

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(II) consults with such committees regarding the negotiation of such agreement.

(B) The provisions of section 151 shall not apply to an implementing bill (within the meaning of section 151(b)) if —

(i) such implementing bill contains a provision approving of any trade agreement which —

(I) is entered into under this section with any country other than Israel, and

(II) provides for the elimination or reduction of any duty imposed by the United States, and

(ii) either —

(I) the requirements of subparagraph (A) were not met with respect to the negotiation of such agreement, or

(II) the Committee on Finance of the Senate or the Committee on Ways and Means of the House of Representatives disapproved of the negotiation of such agreement before the close of the 60-day period which begins on the date notice is provided under subparagraph (A)(ii)(I) with respect to the negotiation of such agreement.

(C) The 60-day period described in subparagraphs (A)(ii) and (B)(ii)(II) shall be computed without regard to —

(i) the days on which either House of Congress is not in session because of an adjournment of more than 3 days to a day certain or an adjournment of the Congress sine die, and

(ii) any Saturday and Sunday, not excluded under clause (i), when either House of Congress is not in session.

(c) PRESIDENTIAL CONSULTATION WITH CONGRESS PRIOR TO ENTRY INTO TRADE AGREEMENTS. — Before the President enters into any trade agreement under this section providing for the harmonization, reduction, or elimination of a barrier to (or other distortion of) international trade, he shall consult with the Committee on Ways and Means of the House of Representatives, the Committee on Finance of the Senate, and with each committee of the House and the Senate and each joint committee of the Congress which has jurisdiction over legislation involving subject matters which would be affected by such trade agreement. Such consultation shall include all matters relating to the implementation of such trade agreement as provided in subsections (d) and (e). If it is proposed to implement such trade agreement, together with one or more other trade agreements entered into under this section, in a single implementing bill, such

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consultation shall include the desirability and feasibility of such proposed implementation.

(d) SUBMISSION TO CONGRESS OF AGREEMENTS, DRAFTS OF IMPLEMENTING BILLS, AND STATEMENTS OF PROPOSED ADMINISTRATIVE ACTION. — Whenever the President enters into a trade agreement under this section providing for the harmonization, reduction, or elimination of a barrier to (or other distortion of) international trade, he shall submit such agreement, together with a draft of an implementing bill (described in section 151(b)) and a statement of any administrative action proposed to implement such agreement, to the Congress as provided in subsection (e), and such agreement shall enter into force with respect to the United States only if the provisions of subsection (e) are complied with and the implementing bill submitted by the President is enacted into law.

(e) STEPS PREREQUISITE TO ENTRY INTO FORCE OF TRADE AGREEMENTS. — Each trade agreement submitted to the Congress under this subsection shall enter into force with respect to the United States if (and only if) —

(1) the President, not less than 90 days before the day on which he enters into such trade agreement, notifies the House of Representatives and the Senate of his intention to enter into such an agreement, and promptly thereafter publishes notice of such intention in the Federal Register;

(2) after entering into the agreement, the President transmits a document to the House of Representatives and to the Senate containing a copy of the final legal text of such agreement together with —

(A) a draft of an implementing bill and a statement of any administrative action proposed to implement such agreement, and an explanation as to how the implementing bill and proposed administrative action change or affect existing law, and

(B) a statement of his reasons as to how the agreement serves the interests of United States commerce and as to why the implementing bill and proposed administrative action is required or appropriate to carry out the agreement; and

(3) the implementing bill is enacted into law.

(f) OBLIGATIONS IMPOSED UPON FOREIGN COUNTRIES OR INSTRUMENTALITIES RECEIVING BENEFITS UNDER TRADE AGREEMENTS. — To insure that a foreign country or instrumentality which receives benefits under a trade agreement entered into under this section is subject to the obligations imposed by such agreement, the President may recommend to Congress in the implementing bill and statement of administrative action submitted with respect to such agreement that the benefits and obligations of such agreement apply solely to the parties to such agreement, if such application is consistent with the terms of such agreement. The President may also recommend with respect to any such agreement that the benefits and obligations of such agreement not apply uniformly to all parties to such agreement, if such application is consistent with the

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section 282 of the Uruguay Round Agreements Act,[29] or

[28](...continued)
terms of such agreement.

(g) DEFINITIONS. — For purposes of this section —

(1) the term "barrier" includes —

(A) the American selling price basis of customs evaluation as defined in section 402 or 402a of the Tariff Act of 1930, as appropriate, and

(B) any duty or other import restriction;

(2) the term "distortion" includes a subsidy; and

(3) the term "international trade" includes —

(A) trade in both goods and services, and

(B) foreign direct investment by United States persons, especially if such investment has implications for trade in goods and services.

19 U.S.C. § 2112.

[29] Section 282 of the Uruguay Round Agreements Act is codified as amended at 19 U.S.C. § 3572, and states:

SEC. 282. REVIEW OF SUBSIDIES AGREEMENT

(a) GENERAL OBJECTIVES. — The general objectives of the United States under this part are —

(1) to ensure that parts II and III of the Agreement on Subsidies and Countervailing Measures referred to in section 101(d)(12) [19 U.S.C. § 3511(d)(12)] (hereafter in this section referred to as the "Subsidies Agreement") are effective in disciplining the use of subsidies and in remedying the adverse effects of subsidies, and

(2) to ensure that part IV of the Subsidies Agreement does not undermine the benefits derived from any other part of that Agreement.

(b) SPECIFIC OBJECTIVE. — The specific objective of the United States under this part shall be to create a mechanism which will provide for an ongoing review of the operation of part IV of the Subsidies Agreement.

(c) SUNSET OF NONCOUNTERVAILABLE SUBSIDIES PROVISIONS. —

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[29](...continued)

(1) IN GENERAL. — Subparagraphs (B), (C), (D), and (E) of section 771(5B) of the Tariff Act of 1930 [19 U.S.C. § 1677(5B)(B), (C), (D), and (E)] shall cease to apply as provided in subparagraph (G)(i) of such section, unless, before the date referred to in such subparagraph (G)(i) —

(A) the Subsidies Committee determines to extend Articles 6.1, 8, and 9 of the Subsidies Agreement as in effect on the date on which the Subsidies Agreement enters into force or in a modified form, in accordance with Article 31 of such Agreement,

(B) the President consults with the Congress in accordance with paragraph (2), and

(C) an implementing bill is submitted and enacted into law in accordance with paragraphs (3) and (4).

(2) CONSULTATION WITH CONGRESS BEFORE SUBSIDIES COMMITTEE AGREES TO EXTEND. — Before a determination is made by the Subsidies Committee to extend Articles 6.1, 8, and 9 of the Subsidies Agreement, the President shall consult with the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate regarding such extension.

(3) IMPLEMENTATION OF EXTENSION. —

(A) NOTIFICATION AND SUBMISSION. — Any extension of subparagraphs (B), (C), (D), and (E) of section 771(5B) of the Tariff Act of 1930 [19 U.S.C. § 1677(5B)(B), (C), (D), and (E)] shall take effect if (and only if) —

(i) after the Subsidies Committee determines to extend Articles 6.1, 8, and 9 of the Subsidies Agreement, the President submits to the committees referred to in paragraph (2) a copy of the document describing the terms of such extension, together with —

(I) a draft of an implementing bill,

(II) a statement of any administrative action proposed to implement the extension, and

(III) the supporting information described in subparagraph (C); and

(ii) the implementing bill is enacted into law.

(B) IMPLEMENTING BILL. — The implementing bill referred to in subparagraph (A) shall contain only those provisions that are necessary or appropriate to implement an extension of the provisions of section 771(5B) (B), (C), (D), and (E) of the Tariff Act of 1930 [19 U.S.C. § 1677(5B)(B), (C),

(continued...)

[29](...continued)

(D), and (E)] as in effect on the day before the date of the enactment of the implementing bill or as modified to reflect the determination of the Subsidies Committee to extend Articles 6.1, 8, and 9 of the Subsidies Agreement.

(C) SUPPORTING INFORMATION. — The supporting information required under subparagraph (A)(i)(III) consists of —

(i) an explanation as to how the implementing bill and proposed administrative action will change or affect existing law; and

(ii) a statement regarding —

(I) how the extension serves the interests of United States commerce, and

(II) why the implementing bill and proposed administrative action is required or appropriate to carry out the extension.

(4) [Omitted]

(5) REPORT BY THE TRADE REPRESENTATIVE. — Not later than the date referred to in section 771(5B)(G)(i) of the Tariff Act of 1930 [19 U.S.C. § 1677(5B)(G)(i)], the Trade Representative shall submit to the Congress a report setting forth the provisions of law which were enacted to implement Articles 6.1, 8, and 9 of the Subsidies Agreement and should be repealed or modified if such provisions are not extended.

(d) REVIEW OF THE OPERATION OF THE SUBSIDIES AGREEMENT. — The Secretary of Commerce, in consultation with other appropriate departments and agencies of the Federal Government, shall undertake an ongoing review of the operation of the Subsidies Agreement. The review shall address —

(1) the effectiveness of part II of the Subsidies Agreement in disciplining the use of subsidies which are prohibited under Article 3 of the Agreement,

(2) the effectiveness of part III and, in particular, Article 6.1 of the Subsidies Agreement, in remedying the adverse effects of subsidies which are actionable under the Agreement, and

(3) the extent to which the provisions of part IV of the Subsidies Agreement may have undermined the benefits derived from other parts of the Agreement, and, in particular —

(A) the extent to which WTO member countries have cooperated in reviewing and improving the operation of part IV of the Subsidies Agreement,

(B) the extent to which the provisions of Articles 8.4 and 8.5 of the

(continued...)

section 2105(a)(1) of the Bipartisan Trade Promotion Authority Act of 2002[30] and which contains —

§ 151(b)(1)(A) **(A) a provision approving such trade agreement or agreements or such extension,**

§ 151(b)(1)(B) **(B) a provision approving the statement of administrative action (if any) proposed to implement such trade agreement or agreements, and**

§ 151(b)(1)(C) **(C) if changes in existing laws or new statutory authority is required to implement such trade agreement or agreements or such extension, provisions, necessary or appropriate to implement such trade agreement or agreements or such extension, either repealing or amending existing laws or providing new statutory authority.[31]**

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[29](...continued)

Subsidies Agreement have been effective in identifying and remedying violations of the conditions and criteria described in Article 8.2 of the Agreement, and

(C) the extent to which the provisions of Article 9 of the Subsidies Agreement have been effective in remedying the serious adverse effects of subsidy programs described in Article 8.2 of the Agreement.

Not later than 4 years and 6 months after the date of the enactment of this Act [Dec. 8, 1994], the Secretary of Commerce shall submit to the Congress a report on the review required under this subsection.

19 U.S.C. § 3572.

[30] The Trade Act of 2002 added "section 2105(a)(1) of the Bipartisan Trade Promotion Authority Act of 2002". For the text of section 2105(a)(1), see *infra* p. 257.

[31] The Senate Finance Committee report on what would become the Trade Act of 1974 states with regard to these definitions:

Section 151(b). Definitions. — A bill implementing a nontariff barrier agreement would contain a provision approving the trade agreement or trade agreements to be implemented, a provision approving a statement of administrative action (including any rules or regulations) necessary to implement the agreement or agreements (if there is to

(continued...)

§ 151(b)(2)

(2) The term "implementing revenue bill or resolution"[32] means an implementing bill,[33] or approval resolution,[34] which contains one or more revenue measures by reason of which it must originate in the House of Representatives.[35]

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[31](...continued)
be any such administrative action), and, if changes in existing law or if new statutory law would be required, provisions either repealing or amending existing law, or providing new statutory authority.

The implementing bill would, therefore, include draft provisions of legislation necessary to implement the agreement and, if significant administrative action is contemplated, a general statement as to the nature of such action. The Committee recognizes that at the time an implementing bill is proposed, it may be impossible to submit for Congressional review the precise administrative rules, regulations or executive orders to be issued following such an agreement. Moreover, the Committee does not believe it is advisable to subject detailed rules to Congressional approval and thereby raise the problem of subsequent minor changes in such rules requiring further Congressional approval. However, within these guidelines, the Committee believes that the statement of administrative action should be as complete as possible.

This subsection would also define "implementing bill", "implementing revenue bill", and "approval resolution". The language of the Committee bill speaks for itself on the definitions.

S. REP. NO. 93-1298, at 108 (1974).

[32] The Customs and Trade Act of 1990, Pub. L. No. 101-382, § 132(b)(2)(A), 104 Stat. 629, 645 (Aug. 20, 1990), inserted "or resolution".

[33] Section 151(b)(1) defines "implementing bill." *See supra* p. 60.

[34] Section 151(b)(3) defines "approval resolution." *See infra* p. 72. The Customs and Trade Act of 1990, Pub. L. No. 101-382, § 132(b)(2)(B), 104 Stat. 629, 645 (Aug. 20, 1990), inserted ", or approval resolution,".

[35] This paragraph reflects the Constitution's Origination Clause, which states: "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." U.S. CONST. art I, § 7, cl. 1. *See generally* JOHNNY H. KILLIAN & GEORGE A. COSTELLO, THE CONSTITUTION OF THE UNITED STATES OF AMERICA: ANALYSIS AND INTERPRETATION 135-37 (1992) (on "Revenue Bills") <http://www.crs.gov/products/conan/Article01/topic_S7_C1_1_1.html>; STAFF OF HOUSE COMM. ON WAYS & MEANS, 103D CONG, OVERVIEW OF THE FEDERAL TAX SYSTEM 9-22 (Comm. Print 1993) (WMCP 103-17); JAMES V. SATURNO, THE ORIGINATION CLAUSE OF THE U.S. CONSTITUTION: INTERPRETATION AND ENFORCEMENT (May 10, 2002) (Cong. Res. Serv. no. RL31399) <http://www.congress.gov/erp/rl/pdf/RL31399.pdf>; James V. Saturno, Blue-Slipping: The Origination Clause in the House of Representatives (July 15, 2003)
(continued...)

§ 151(b)(3)

(3) The term "approval resolution" means only a joint resolution[36] of the two Houses of the Congress, the matter after the resolving clause of which is as follows: "That the

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[35](...continued)
(Cong. Res. Serv. no. RS21236) <http://www.congress.gov/erp/rs/pdf/RS21236.pdf>.

The Senate Finance Committee report on what would become the Trade Act of 1974 recognized this application of the Origination Clause parenthetically:

> Under the Committee bill there is virtual assurance that a nontariff barrier agreement or bilateral commercial agreement with a communist nation which enters into such agreement after the passage of this bill would be voted on, on its merits, within 60 days during which each House considering the implementing legislation is in session (or, in the case of a revenue bill, which must originate in the House, within 90 days).
>
> . . . .
>
> An exception to the general time limit is made for implementing bills which, because they are revenue bills, must initiate in the House of Representatives. In such cases, the appropriate Senate committees would have an extra 15 "legislative" days for consideration of the bill before it must be reported. Under section 151, a vote on final passage would be taken in the Senate on or before the close of the 15th day after such bill is reported by the committee(s) of the Senate to which it was referred, or after such committees have been discharged from further consideration of the bill.

S. REP. NO. 93-1298, at 107-09 (1974).

[36] The Customs and Trade Act of 1990, Pub. L. No. 101-382, § 132(b)(2)(C), 104 Stat. 629, 645 (Aug. 20, 1990), struck "concurrent" and inserted "joint". For a discussion of similar changes to "joint" resolutions made by the Customs and Trade Act of 1990 to avoid challenge after *Immigration & Naturalization Service v. Chadha*, 462 U.S. 919 (1983), see *infra* note 125, p. 133.

"Joint resolution" means:

> A legislative measure that Congress usually uses for purposes other than general legislation. Like a bill, it has the force of law when passed by both houses and either approved by the president or passed over the president's veto. Unlike a bill, a joint resolution enacted into law is not called an act; it retains its original title.
>
> . . . .
>
> The House designates joint resolutions as H. J. Res., the Senate as S. J. Res. Each house numbers its joint resolutions consecutively in the order of introduction during a two-year Congress.

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Congress approves the extension of nondiscriminatory treatment with respect to the products of _____ transmitted by the President to the Congress on _____", the first blank space being filled with the name of the country involved and the second blank space being filled with the appropriate date.[37]

[37] The Senate Finance Committee report on what would become the Trade Act of 1974 states with regard to these definitions:

> *Section 151(b). Definitions.* — . . . .
>
> . . . .
>
> This subsection would also define "implementing bill", "implementing revenue bill", and "approval resolution". The language of the Committee bill speaks for itself on the definitions.
>
> Resolutions approving trade agreements with Communist countries would be in the following form:
>
> *"That the Congress approves the entering into force of the bilateral commercial agreement with* _____
> (Name of country)
> *transmitted by the President to the Congress on* _____."
> (Date)

S. REP. NO. 93-1298, at 108 (1974).

The House Ways and Means Committee report on what would become the Trade Act of 1974 states with regard to the precursors to these approval resolutions:

> CHAPTER 5 — CONGRESSIONAL DISAPPROVAL PROCEDURES WITH RESPECT TO PRESIDENTIAL ACTIONS
>
> *Section 151. Resolutions disapproving the entering into force of trade agreements on distortions of trade or disapproving certain other actions*
>
> . . . .
>
> Section 151(b)(1) provides that for purposes of section 151, the term "resolution" means only a resolution of either House of Congress, the matter after the resolving clause of which is as follows: "That the _____ does not favor _____ transmitted to Congress by the President on _____", the first blank space being filled with the name of the resolving House and the third blank space being appropriately filled with the day and year.

(continued...)

§ 151(c) **(c) INTRODUCTION AND REFERRAL.[38] —**

[37](...continued)

Section 151(b)(2) provides that the second blank space referred to in section 151(b)(1) shall be filled as follows:

(1) in the case of a resolution relating to the entering into force of a trade agreement under section 102(f) of the bill, with the phrase "the entering into force of the trade agreement";

(2) in the case of a resolution referred to in section 204(b) of the bill, with the phrase "the taking effect or the continuation in effect of the proposed action under paragraph (3) or (4) of section 203(b) of the Trade Reform Act of 1973";

(3) in the case of a resolution referred to in section 302(b) of the bill, with the phrase "the taking effect or the continuation in effect of action under section 301 of the Trade Reform Act of 1973"; and

(4) in the case of a resolution referred to in section 406(c) of the bill, with the phrase "the entering into force or the continuing in effect of nondiscriminatory treatment with respect to the products of _____" (with this blank space being filled by the name of the appropriate country).

H.R. REP. NO. 93-571, at 108-09 (1973).

[38] The joint statement of managers accompanying the conference report on the Trade Act of 1974 explained the legislation contemplated by this subsection generally:

Amendments Nos. 159, 160, 161, and 162: Section 151 of the bill as passed by the House contained a procedure for congressional disapproval with respect to nontariff barrier trade agreements submitted to Congress, to escape clause actions to retaliation against unfair trade practices, and to extension or continuation of nondiscriminatory tariff treatment. Under this procedure, the President was to transmit a proclamation or agreement to the Congress, after 7 days it was in order to discharge the committee to which a resolution of disapproval had been referred, and, if either House approved the resolution of disapproval within a 90-day period, the agreement or proclamation was not to take effect.

The Senate amendments strike out section 151 of the House bill and insert new sections 151, 152, and 153. Under these amendments, a congressional approval procedure applies to all nontariff barrier trade agreements, to agreements establishing certain principles in international trade (including GATT revisions) which change federal law (including a material change in an administrative rule), and to bilateral trade agreements with nonmarket countries entered into after the date of the enactment of the bill. Under this procedure, an implementing bill or approval resolution is submitted by the President and introduced in each House (with no amendments permitted), time limits are established for committee consideration, and floor votes. If the bill is not enacted or the resolution is not approved as the case may be, the agreement or revision cannot

(continued...)

[38](...continued)
enter into force.

. . . .

. . . . The House recedes with clarifying and conforming amendments.

H.R. REP. NO. 93-1644, as 32-33 (1974).

The Senate Finance Committee report on what would become the Trade Act of 1974 states with regard to introduction and referral:

> *Section 151 (c). Introduction and Referral.* — An implementing bill, or an approval resolution, would be transmitted by the President (after consultations, in the case of an implementing bill, with the Committee on Ways and Means of the House and Committee on Finance as to how such legislation will be "packaged") to both the House of Representatives and the Senate. On the day of such transmission, or, in the case of an approval resolution, on the day on which a bilateral commercial agreement entered into under Section 405 is transmitted to the House and the Senate, the bill or resolution would be introduced (by request) by the majority leader of the House for himself, or his designee, and by the minority leader of the House or his designee, and in the Senate, by the majority leader of the Senate for himself, or his designee and the minority leader of the Senate or his designee. The implementing bill would then be referred to the House Ways and Means Committee, the Senate Finance Committee, and to other committees of either House with jurisdiction over legislation involving the subject matter of the agreement. The approval resolution would be referred to the House Committee on Ways and Means and the Senate Committee on Finance.

S. REP. NO. 93-1298, at 108-09 (1974).

The House Ways and Means Committee report on what would become the Trade Act of 1974 states with regard to introduction and referral:

> The bill, therefore, provides for the consideration of resolutions disapproving the entering into trade agreements on distortions of trade or disapproving certain other actions as discussed above. A resolution respecting the subject matter described may be referred to the Committee on Ways and Means of the House of Representatives and to the Committee on Finance of the Senate, as well as other committees of original jurisdiction with respect to the entering into force of trade agreements on distortions of trade. . . .
>
> . . . .
>
> Section 151(c) provides that (1) a resolution disapproving the entering into force of a trade agreement under section 102(f) shall be referred to the committee or committees of each House which would have jurisdiction over proposed legislation relating to matters covered by the proclamation and orders submitted with such

(continued...)

§ 151(c)(1) **(1) On the day on which a trade agreement or extension is submitted to the House of Representatives and the Senate under section 102,[39] section 282 of the Uruguay Round Agreements Act,[40] or section 2105(a)(1) of the Bipartisan Trade Promotion Authority Act of 2002,[41] the implementing bill[42] submitted by the President with respect to such trade agreement or extension shall be introduced (by request[43]) in the House by the majority leader of the House,[44] for himself**

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[38](...continued)
agreement; and (2) a resolution referred in section 204(b), 302(b), or 406(c) shall be referred to the Committee on Ways and Means of the House or to the Committee on Finance of the Senate, as the case may be.

H.R. REP. NO. 93-571, at 42, 109 (1973).

[39] *See supra* note 28.

[40] *See supra* note 29.

[41] *See infra* p 257.

[42] Section 151(b)(1) defines "implementing bill." *See supra* p. 60.

[43] "By request" means:

A designation indicating that a member has introduced a measure on behalf of the president, an executive agency, or a private individual or organization. Members often introduce such measures as a courtesy because neither the president nor any person other than a member of Congress can do so. The term, which appears next to the sponsor's name, implies that the member who introduced the measure does not necessarily endorse it. A House rule dealing with by-request introductions dates from 1888, but the practice goes back to the earliest history of Congress.

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[44] Pursuant to this clause, the House Majority Leader introduced, by request, the United States-Oman Free Trade Agreement Implementation Act, H.R. 5684, 109th Cong. (2006) (Majority Leader Boehner, for himself and Rep. James Moran) (introduced June 26, 2006); the United States-Bahrain Free Trade Agreement Implementation Act, H.R. 4340, 109th Cong. (2005) (Majority Leader Blunt, for himself and Ways & Means Comm. Ranking Minority Member Rangel) (introduced Nov. 16, 2005); the Dominican Republic-Central America-United States Free Trade Agreement Implementation Act (CAFTA), H.R. 3045, 109th Cong. (2005) (Majority Leader DeLay, for himself and Rep. William Jefferson) (introduced June 23, 2005);
(continued...)

and the minority leader of the House, or by Members of the House designated by the majority leader and minority leader of the House;[45] and shall be introduced (by request) in the Senate by the majority leader of the Senate,[46] for himself and the minority leader of the Senate, or by Members of the Senate designated by the majority leader and minority leader

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[44](...continued)
the United States-Morocco Free Trade Agreement Implementation Act, H.R. 4842, 108th Cong. (2004) (Majority Leader DeLay, for himself & Ways & Means Comm. Ranking Minority Member Rangel) (introduced July 15, 2004); the United States-Australia Free Trade Agreement Implementation Act, H.R. 4759, 108th Cong. (2004) (Majority Leader DeLay, for himself & Ways & Means Comm. Ranking Minority Member Rangel) (introduced July 6, 2004); the United States-Singapore Free Trade Agreement Implementation Act, H.R. 2739, 108th Cong. (2003) (Majority Leader DeLay, for himself & Ways & Means Comm. Ranking Minority Member Rangel) (introduced July 15, 2003); the United States-Chile Free Trade Agreement Implementation Act, H.R. 2738, 108th Cong. (2003) (Majority Leader DeLay, for himself & Ways & Means Comm. Ranking Minority Member Rangel) (introduced July 15, 2003); the Uruguay Round Agreements Act (URAA), H.R. 5110, 103d Cong. (1994) (Majority Leader Gephardt, for himself & Minority Leader Michel) (introduced Sept. 27, 1994); the United States-Canada Free Trade Agreement Implementation Act of 1988, H.R. 5090, 100th Cong. (1988) (Majority Leader Foley, for himself & Minority Leader Michel) (introduced July 26, 1988); the United States-Israel Free Trade Area Implementation Act of 1985, H.R.2268, 99th Cong. (1985) (Majority Leader Wright, for himself & Minority Leader Michel) (introduced Apr. 29, 1985); and the Trade Agreements Act of 1979, H.R.4537, 96th Cong. (1979) (Majority Leader Wright, for himself & Minority Leader Rhodes) (introduced June 19, 1979).

[45] Pursuant to this clause, Members other than the Majority Leader introduced the North American Free Trade Agreement Implementation Act (NAFTA), H.R. 3450, 103d Cong (1993) (Ways & Means Comm. Chairman Rostenkowski, for himself & Minority Leader Michel) (introduced Nov. 4, 1993).

[46] Pursuant to this clause, the Senate Majority Leader introduced, by request, the Uruguay Round Agreements Act (URAA), S. 2467, 103d Cong. (1994) (Majority Leader Mitchell, for himself, Finance Comm. Chairman Moynihan, & Finance Comm. Ranking Republican Member Packwood) (introduced Sept. 27, 1994); the North American Free Trade Agreement Implementation Act (NAFTA), S. 1627, 103d Cong (1993) (Majority Leader Mitchell, for himself & Republican Leader Dole) (introduced Nov. 4, 1993); the United States-Canada Free Trade Agreement Implementation Act of 1988, S. 2651, 100th Cong. (1988) (Majority Leader Byrd, for himself & Republican Leader Dole) (introduced July 25, 1988).

The Parliamentarian's office has advised (in June 2005) that the Majority and Minority Leaders both need either to be listed as a sponsor or cosponsor or to designate a sponsor or cosponsor of the trade agreement implementing bill in order for a Senator to introduce the bill pursuant to the Trade Act. The logic of this advice supports the ability of both Leaders to designate the same Senator, if they so choose.

of the Senate.[47] If either House is not in session on the day on which such a trade agreement or extension is submitted, the implementing bill[48] shall be introduced in that House, as provided in the preceding sentence, on the first day thereafter on which that House is in session. Such bills shall be referred by the Presiding Officers of the respective Houses to the appropriate committee, or, in the case of a bill containing provisions within the jurisdiction of two or more committees, jointly to such committees for consideration of those provisions within their respective jurisdictions.[49]

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[47] Pursuant to this clause, Members other than the Majority Leader introduced, by request, the United States-Oman Free Trade Agreement Implementation Act, H.R. 5684, S. 3569, 109th Cong. (2006) (Finance Comm. Chairman Grassley, for himself and Finance Comm. Ranking Democratic Member Baucus) (introduced June 26, 2006); the United States-Bahrain Free Trade Agreement Implementation Act, S. 2027, 109th Cong. (2005) (Finance Comm. Chairman Grassley, for himself and Finance Comm. Ranking Democratic Member Baucus) (introduced Nov. 16, 2005); the Dominican Republic-Central America-United States Free Trade Agreement Implementation Act (CAFTA), S. 1307, 109th Cong. (2005) (Finance Comm. Chairman Grassley, for himself, Majority Leader Frist, & Democratic Leader Reid) (introduced June 23, 2005); the United States-Morocco Free Trade Agreement Implementation Act, S. 2677, 108th Cong. (2004) (Finance Comm. Chairman Grassley, for himself, Finance Comm. Ranking Democratic Member Baucus, & Majority Leader Frist) (introduced July 15, 2004); the United States-Australia Free Trade Agreement Implementation Act, S. 2610, 108th Cong. (2004) (Finance Comm. Chairman Grassley, for himself, Finance Comm. Ranking Democratic Member Baucus, & Majority Leader Frist) (introduced July 6, 2004); the United States-Singapore Free Trade Agreement Implementation Act, S. 1417, 108th Cong. (2003) (Finance Comm. Chairman Grassley, for himself, Finance Comm. Ranking Democratic Member Baucus, & Majority Leader Frist) (introduced July 15, 2003); the United States-Chile Free Trade Agreement Implementation Act, S. 1416, 108th Cong. (2003) (Finance Comm. Chairman Grassley, for himself, Finance Comm. Ranking Democratic Member Baucus, & Majority Leader Frist) (introduced July 15, 2003).

[48] Section 151(b)(1) defines "implementing bill." *See supra* p. 60.

[49] This requirement of joint referral varies with the general rule in the Senate of referral to one committee. Senate rule XVII states (in part): "in any case in which a controversy arises as to the jurisdiction of any committee with respect to any proposed legislation, the question of jurisdiction shall be decided by the presiding officer, without debate, in favor of the committee which has jurisdiction over the subject matter which predominates in such proposed legislation." Sen. R. XVII(1) <http://rules.senate.gov/senaterules/rule17.htm>.

Pursuant to this requirement as incorporated by the Trade Act of 2002, on July 17, 2003, the Presiding Officer referred both the United States-Chile Free Trade Agreement Implementation Act, S. 1416, 108th Cong. (2003), and the United States-Singapore Free Trade Agreement Implementation Act, S. 1417, 108th Cong. (2003), to the Committee on Finance and the

(continued...)

§ 151(c)(2)

(2) On the day on which a bilateral commercial agreement, entered into under title IV of this Act[50] after the date of the enactment of this Act,[51] is transmitted to the House of Representatives and the Senate, an approval resolution[52] with respect to such agreement shall be introduced (by request[53])

[49](...continued)
Committee on the Judiciary, jointly, pursuant to section 2103(b)(3) of Public Law 107-210 (the Trade Act of 2002). *See* 149 CONG. REC. S9,414 (daily ed. July 15, 2003).

Similarly, on September 27, 1994, the Presiding Officer referred the Uruguay Round Agreements Act (URAA), S. 2467, 103d Cong. (1994), jointly to the Committees on Finance; Agriculture, Nutrition, and Forestry; Commerce, Science, and Transportation; Governmental Affairs; Judiciary; and Labor and Human Resources pursuant to 19 U.S.C. 2191(c)(1) (section 151(c)(1) of the Trade Act of 1974).

Similarly, on November 4, 1993, the Presiding Officer referred the North American Free Trade Agreement Implementation Act (NAFTA), S. 1627, 103d Cong (1993), jointly to the Committees on Finance; Agriculture, Nutrition, and Forestry; Commerce, Science, and Transportation; Governmental Affairs; Judiciary; and Foreign Relations pursuant to 19 U.S.C. 2191(c) (section 151(c) of the Trade Act of 1974).

Similarly, on July 25, 1988, the Presiding Officer referred the United States-Canada Free Trade Agreement Implementation Act of 1988, S. 2651, 100th Cong. (1988) jointly to the Committees on Finance; Agriculture, Nutrition, and Forestry; Banking, Housing, and Urban Affairs; Energy and Natural Resources; and Judiciary pursuant to 19 U.S.C. 2191(c). On August 9, 1988, the Presiding Officer referred the companion bill, H.R. 5090, 100th Cong. (1988), to the same committees. Further, by unanimous consent, on September 13, 1988, S. 2651 and H.R. 5090 were referred to the Committee on Governmental Affairs under an order that the Committee be considered to have had referred to it the bill at the time such bill was jointly referred pursuant to 19 U.S.C. 2191(c) (section 151(c) of the Trade Act of 1974).

[50] Title IV of this Act, Pub. L. No. 93-618, §§ 401-411, 88 Stat. 1978, 2056-65, 19 U.S.C. §§ 2431-2441, addresses "Trade Relations with Countries Not Receiving Nondiscriminatory Treatment."

[51] Jan. 3, 1975.

[52] Section 151(b)(3) defines "approval resolution." *See supra* p. 72.

[53] "By request" means:

A designation indicating that a member has introduced a measure on behalf of the president, an executive agency, or a private individual or organization. Members often introduce such measures as a courtesy because neither the president nor any person other than a member of Congress can do so. The term, which appears next to the sponsor's name, implies that the member who introduced the measure does not necessarily endorse
(continued...)

in the House by the majority leader of the House, for himself and the minority leader of the House, or by Members of the House designated by the majority leader and minority leader of the House; and shall be introduced (by request) in the Senate by the majority leader of the Senate, for himself and the minority leader of the Senate, or by Members of the Senate designated by the majority leader and minority leader of the Senate. If either House is not in session on the day on which such an agreement is transmitted, the approval resolution[54] with respect to such agreement shall be introduced in that House, as provided in the preceding sentence, on the first day thereafter on which that House is in session. The approval resolution introduced in the House shall be referred to the Committee on Ways and Means and the approval resolution introduced in the Senate shall be referred to the Committee on Finance.

[53](...continued)
it. A House rule dealing with by-request introductions dates from 1888, but the practice goes back to the earliest history of Congress.

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[54] Section 151(b)(3) defines "approval resolution." *See supra* p. 72.

§ 151(d)

(d) AMENDMENTS PROHIBITED. — No amendment to an implementing bill[55] or approval resolution[56] shall be in order in either the House of Representatives or the Senate[57]; and

[55] Section 151(b)(1) defines "implementing bill." *See supra* p. 60.

[56] Section 151(b)(3) defines "approval resolution." *See supra* p. 72.

[57] The Senate Finance Committee report on what would become the Trade Act of 1974 states with regard to amendments:

> *Section 151(d). Amendments Prohibited.* — In order to assure as nearly as possible, consistent with the legislative prerogative and Congressional rulemaking procedures, that implementing bills or approval resolutions would be voted on as negotiated, section 151(d) provides that no amendments to implementing bills or approval resolutions are in order. This rule would not be subject to suspension in either House by unanimous consent.

S. REP. NO. 93-1298, at 109 (1974).

During debate on the North American Free Trade Agreement Implementation Act on November 19, 1993, Senator Ted Stevens raised a challenge to this provision's prohibition of amendments based on the Senate's constitutional power to amend revenue measures. U.S. CONST. art. I, § 7, cl. 1. The Presiding Officer ruled that the amendment was not in order. Senator Stevens appealed the ruling of the Chair, and the Senate sustained the appeal by roll-call vote. Excerpts from the debate appear below:

> Mr. STEVENS. . . .
>
> Parliamentary inquiry: Has this bill been designated as a revenue measure?
>
> The PRESIDING OFFICER. The bill has been considered on the assumption that it is a revenue measure.
>
> Mr. STEVENS. I believe that the Senate should be aware that under the Constitution there is no question that article I, section 7 provides Members of the Senate the right to offer amendments to revenue bills.
>
> Article 1, section 7: "All bills for raising Revenues shall originate in the House of Representatives, but the Senate may propose or concur with Amendments as on other Bills."
>
> Now, just as a side reference, listen to that — "as on other bills." I have presumed now for 25 years that I have the right to offer an amendment to any bill, right? We sometimes limit that right to offer amendments. We designate that we can consent to it, but we enter into consent agreements. In this instance, we set up a procedure that I think has ignored this Constitutional right, and I wish to now trigger this concept.

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Madam President, I send an amendment to the desk.

The PRESIDING OFFICER. The clerk will read the amendment.

The assistant legislative clerk read as follows:

The Senator from Alaska [Mr. Stevens] proposes an amendment numbered 1221.

Beginning on page 282, line 11, strike all through line 4 on page 300.

Mr. STEVENS. Madam President, I would ask, is this amendment in order?

The PRESIDING OFFICER. The Chair holds that the amendment is not in order under fast-track legislation 19 U.S.C. 2191(d).

Mr. STEVENS. Madam President, I appeal the ruling of the Chair.

Mr. MOYNIHAN. I ask for the yeas and nays.

The PRESIDING OFFICER. Under the fast-track debate, there will be 1 hour evenly divided.

. . . .

Mr. STEVENS. Madam President, I wish to point out once again I believe that as Members of the Senate, we have at the very least, a constitutional right to offer amendments to revenue bills. The ruling of the Chair has just denied me that right after stating that NAFTA is a revenue measure. Clearly, article 1, section 7 of the Constitution gives me the right to propose amendments. The Senate has the right to propose and concur with amendments "as on other bills." The measure before this body is a revenue bill, and should be amendable. I think the Senate must carefully consider this issue. We must consider the very vast precedent that is involved in the procedure that has been followed by this administration. . . .

. . . .

Madam President, there is no question that the ruling of the Chair based on the fast-track procedure has prohibited me from offering an amendment to a revenue bill, and has violated my constitutional rights as a Senator from Alaska [Mr. Stevens] to offer an amendment to a revenue bill.

It does not seem fair that there can be a procedure in American democracy that would deny a duly elected person the right to try and change a bill — particularly a bill of this type which does not comply with the law.

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Madam President, I close by asking the Senate to think about the precedent we are setting here. We are setting a precedent — at the request of the Executive — giving the Executive broad, broad authority to negotiate non-trade agreements under protections of the fast track procedure.

. . . .

I believe we have the right to be heard. We have the right to offer amendments, and I believe by denying me that right today, the Senate will err. . . .

. . . .

Mr. BAUCUS. . . .

Madam President, I strongly resist the amendment offered by the Senator from Alaska [Mr. Stevens]. First, because the ruling of the Chair is correct. This amendment is out of order. The fast-track statute which we are offering this under is very clear: Amendments under this proceeding are not in order. The Chair is correct. Therefore, the Chair should be affirmed.

More importantly, Madam President, make no mistake about it, this is a killer amendment. If this amendment is successful, if the Chair is overruled, this amendment will kill NAFTA. Deader than a door nail. NAFTA is dead if this amendment passes. Because if this amendment passes, then any amendment is in order. If any amendment to NAFTA is in order, one can conjure up a whole multitude of possible amendments that would be irresistible, that will bring NAFTA down immediately.

If the Senate can offer amendments, then what happens? The House can offer amendments, any amendment, any subject to protect any interest group.

. . . .

. . . This amendment kills NAFTA. This is a killer amendment. In fact, Madam President, this is a serial killer amendment, because it kills fast track; it kills America's ability to negotiate any trade agreement whatsoever. It means the Uruguay round is dead. It is deader than a doornail if this amendment passes because it is subject to amendment, and we can guess all possible kinds of amendments that would come up in that context.

If this ruling is overturned, no country will begin to contemplate negotiating a trade agreement with a U.S. President. Why? Because that country would know that Congress can amend it with impunity, and probably would. French negotiators would have no incentive whatsoever to negotiate with the President with respect to reaching agreement on cultural provisions, on TV programs and films; nor would the Japanese on rice, or any country on any trade matter.

So this is a serial killer amendment. It will kill NAFTA today. It will kill GATT

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next month. And it will kill every other trade agreement we can imagine.

. . . .

The Senator from Alaska [Mr. Stevens] is raising the constitutional question of article I, section 5. That is very simple. Sure, revenue bills begin in the House and come over here. But the provision in the Constitution says we "may" amend; it does not say we have to. It says we may as we get the bills. The Senator is clear and, sure, we limit ourselves around here with consent agreements. The House of Representatives does it with rules. We have all kinds of limitations on our ability to amend. Those are our own rules. We decide what we want to do. The Constitution does not say we must amend. It says we may amend. We, by our rules, may decide under certain circumstances that we do not want to amend.

. . . .

Mr. BAUCUS. I will finish the 23 seconds and state that this is a killer amendment. It is equally clear there will be no more negotiating trade agreements if this amendment passes. . . . In my judgment, the Senator is frustrated as all of us are that we cannot come up with our own personal trade agreements, but we cannot because we are a legislative body.

We are trying to come up with an agreement that serves the national public interest. An agreement with another country, to the mutual best interests of both countries. There is going to be give and take, and this is a process that is going to be necessary because we are not a parliamentary form of government. We are a constitutional form of government, with the separation of powers between the legislative and executive branches, unlike other countries we do negotiations with. That is why the amendment must be defeated.

. . . .

Mr. MOYNIHAN. Madam President, I rise in opposition to the challenge raised by the Senator from Alaska [Mr. Stevens].

Yesterday, I stated my opposition to the North American Free-Trade Agreement. I laid out in some detail the reasons for that opposition. Nevertheless, I strongly oppose the Senator from Alaska [Mr. Stevens]'s appeal from the rule of the Chair. For this represents a challenge not only to the NAFTA, but to the entire process developed for considering this and any other trade agreements — including the Uruguay round of the General Agreement on Tariffs and Trade, the deadline for which is less than 1 month away.

Should the Senator from Alaska [Mr. Stevens] prevail, it will mean not only the downfall of this NAFTA. It will threaten our future consideration of a Uruguay round agreement. Senator Stevens' position is nothing less than a frontal attack on the entire fast-track process. A process that has been in place for the past two decades. With roots

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that date even further back.

I take this opportunity to remind my colleagues why we adopted fast-track procedures for major trade agreements. There is one reason, and it is a compelling one: Without the fast track, countries will not negotiate with us.

Our fast-track procedures really stem from the Reciprocal Trade Agreements Act of 1934. The 1934 Act responded to President Roosevelt's request for authority to negotiate and implement reciprocal trade agreements to clean up after the wreckage of the Smoot-Hawley Tariff Act of 1930.

That infamous act, in which the Congress set more than 20,000 tariff levels, item-by-item, resulted in an average U.S. tariff rate of 52.8 percent. By the end of 1931, 26 countries had retaliated.

The Congress soon realized that Smoot-Hawley was not the course to follow. Congress gave the President broad advance authority to negotiate and conclude reciprocal tariff agreements with foreign countries, without further congressional interference. That authority was extended in 1937, 1940, 1943, 1945, 1948, 1951, 1953, 1955, and again in 1958.

Then came the Kennedy round of GATT negotiations. In the Trade Expansion Act of 1962, Congress again gave the President tariff-cutting authority. But by that time, it had become apparent that, as tariffs were being reduced, other types of trade barriers were being erected.

And that set the stage for a confrontation between the Congress and the White House. The argument was that nontariff barriers fell outside the powers enumerated in the Constitution for the Congress. During the Kennedy round negotiations, the administration argued that trade agreements could be negotiated under the President's foreign affairs power without submitting the agreement to Congress for approval. Congress fought back. The Congress refused to make the legislative changes that were necessary to implement one key aspect of the agreement, and enacted a bill to block the administration from implementing another. These actions destroyed the credibility of our negotiators. For 6 years, our trading partners refused to return to the negotiating table. Nontariff barriers continued to impede our exports. And we looked for a way back to the table.

The solution was the fast track as we know it today. It was first enacted in 1974, and it has served us well since. It was used in considering the Tokyo Round Agreements in 1979. And the United States-Israel Free-Trade Agreement in 1985. And the United States-Canada Free-Trade Agreement in 1988. And now the NAFTA. And these are the procedures that we will follow when we consider the Uruguay round agreements — unless, of course, we kill that opportunity today. For let us not be under any illusions: That is precisely what we will be doing if we vote to find the Senator's appeal well taken.

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We will be overturning a decision that this body made just 4 months ago — our decision to extend the fast track procedures to the Uruguay round results. That decision was by a vote of 76 to 16. An overwhelming vote. A strong bipartisan vote to keep the fast track procedures in place for the Uruguay round.

Therefore, the Senator from Alaska [Mr. Stevens]'s challenge should be opposed not only by supporters of the NAFTA — of which I am not one — but also by any Senator who supports the process that we extended by that overwhelming vote only 4 months ago.

I urge my colleagues to oppose this appeal from the rule of the Chair.

. . . .

Mr. DANFORTH. Madam President, I will not take long. I really wanted to simply raise one point in answer to the Senator from Alaska [Mr. Stevens]. I think that Senator Baucus has pretty well stated the case on the effect that this would have both on NAFTA and on fast track authority in general. But I want to get to the legal argument that is raised by the Senator from Alaska [Mr. Stevens] and particularly his interpretation of the Constitution. The Senator from Alaska [Mr. Stevens] points to article I, section 7, clause 1 of the Constitution. That clause states 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.

The Senator from Alaska [Mr. Stevens] has asked the Chair whether this is a revenue bill. The Chair has said yes, it is a revenue bill. The Senator from Alaska [Mr. Stevens] then concludes that this particular phrase, "the Senate may propose or concur with amendments as on other bills," confers on the Senator from Alaska [Mr. Stevens] an individual right as a Senator to offer an amendment because this is a revenue bill. That is not this Senator's construction of the meaning of that phrase.

The phrase does not say any Senator may offer an amendment. The phrase says that the Senate may propose or concur with amendments as on other bills.

That means that the Senate determines how it functions with respect to amendments. The Senate has already determined this. There is legislation enacted in 1974 and that legislation sets out the terms under which trade agreements and trade legislation pursuant to those agreements come to the floor of the House and to the floor of the Senate.

The fast track legislation provides that they come as the Chair has ruled — without the ability to amend on the floor.

If it were not so there would not be any trade agreements. That is why in 1974 we passed this legislation. If we open up legislation relating to trade agreements on the floor of the Senate to amendments that is the end of it. So that is why that we have this provision of the law. But the Constitution relates to the Senate. It does not relate to

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individual Senators. It does not confer a right on individual Senators. It says in effect that the Senate can determine its own rules. The Constitution says expressly that the Senate can determine its own rules, and pursuant to that constitutional authority the 1974 legislation was enacted.

A comparable provision relates to the Budget Act, and in the Budget Act there are restrictions on what can be done on the floor of the Senate by individual Senators on legislation which is clearly revenue legislation.

When budget reconciliation is before us, for example, a Senator would be out of order, as this Senator understands it, if the Senator were to stand on the floor of the Senate and send an amendment to the desk and the amendment would provide for a tax cut without any offset. The Senator would just believe that there shall be a tax cut. The Senator would say, well, I am exercising my constitutional right to send this amendment to a revenue bill to the Chair, to the desk to be reported, and he would be ruled out of order. If it were not so, budget reconciliation could not operate. If it were not so with respect to trade legislation, trade legislation could not function.

So the Senate can establish rules. Congress can establish legislation which governs the way we, as a Senate, function.

It does not confer a right on an individual Senator. There is no right of an individual Senator to offer an amendment to a revenue bill. It is nowhere found in the Constitution of the United States. That is the sole point that I want to make.

Again, though, I would like to simply reiterate that if the Senator from Alaska [Mr. Stevens] is correct and if we can start offering amendments pertaining to revenue as a matter of right as individual Senators, then goodbye fast track. I mean, that really would be a blockbuster of a precedent as far as the U.S. Senate is concerned. Goodbye any trade agreements. Goodbye fast track legislation. Goodbye the possibility of negotiating the Uruguay round or anything else.

. . . .

Mr. STEVENS. Madam President, I think my friend from Missouri [Mr. Danforth] ought to read the Constitution again, because it says that the Senate may propose or concur with amendments.

If he is correct in his interpretation, it means the whole Senate would have to agree to an amendment before it could even be proposed.

Individual Senators propose amendments, and I am not permitted to propose mine today.

. . . .

Mr. STEVENS. . . .

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Finally, let me say this — and I know others want to speak — under the Budget Act, a motion to strike is always in order. Under this, it is not.

I am making a motion to strike a provision which should not be in this bill. There is no provision in the Budget Act that is similar to this provision. The Senator said that under the Budget Act we gave away our authority to offer amendments, and this is similar to the Budget Act.

That is not so. My amendment is in effect a motion to strike, and I have been denied the ability to even do that.

Suppose my amendment passes — suppose subsection D of the bill comes out?

. . . Some people might vote against the NAFTA bill without it in. I agree with that. Some people might vote for it. But at least it would still be up to the Congress to decide whether to implement NAFTA.

. . . .

Mr. RIEGLE. Will the Senator yield for a question before he yields his time? I, first of all, want to say I agree with the Senator from Alaska [Mr. Stevens], with his basic point. I think he is right about the technical flaw here and that you should, in fact, have the right to come in and address these individual issues that fall outside the scope of the treaty. . . .

. . . .

I would assert that for the very arguments the Senator from Alaska [Mr. Stevens] has made — that has nothing to do with this trade agreement, it has nothing to do with implementing it — there ought to be an ability to offer an amendment to knock it out. In fact I am drafting such an amendment because I think it ought to be knocked out. . . .

It, in my view, illustrates the Senator's point. My question to him — I do not know if the Senator is aware of that particular item — but if he prevails on his basic challenge here of the ability to amend, would we then in turn be able to take and knock something like that out of here as not having anything to do with the treaty, per se?

Mr. STEVENS. Madam President, I believe the Senator from Michigan makes the right point. I believe at any time the Senate finds included in legislation that has been accorded a fast-track, provisions that are not within the scope of the basic authorization — that have not been negotiated within a time limit set and are not necessary either to repeal existing law or to add new statutory law — the Senate ought to have the right by motion of a Senator to strike that provision. The side accords are not within the fast-track. The Senator is absolutely right.

There are several other provisions that should also be struck. I do have some other

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amendments, but I am not going to offer them for obvious reasons. But there are other provisions in here that are similarly disqualified because they are not within the fast-track authority. . . .

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Mr. CHAFEE. . . .

. . . .

In conclusion, Mr. President, I would like to make the final point which the distinguished Senator from Montana [Mr. Baucus] and the others speaking this evening have made. If we can amend this agreement, then fast track is done. We might as well just forget fast track as far as it applies to the General Agreement on Tariffs and Trade and other trade agreements that we apply fast track to in the future.

So, Mr. President, tonight the Senator from Alaska [Mr. Stevens] is, to me, making a very dangerous, if you would, proposal; that is, that the whole fast-track procedure will be undermined.

Mr. DODD. Will my colleague yield on that point?

Mr. CHAFEE. Yes, I would.

Mr. DODD. I think the whole point of this debate is fast-track procedure. If I may, what my colleague from Rhode Island [Mr. Chafee] is saying is that the more appropriate time for this discussion, putting aside the specifics of an agreement, was when this body considered the fast track legislation. If you do not like a fast-track approach — and there are many who do not and there are some legitimate questions about fast track — the time and the place to raise the issue was when we adopted the fast track for this agreement. Once you have accepted that procedure, then, in effect, you have bought into exactly what is occurring here tonight with these particular side agreements. Is that not correct?

Mr. CHAFEE. That is absolutely correct. I might say that is not unique, for this body to deprive itself of the right to make amendments. The Senator from Alaska [Mr. Stevens] says in certain instances he has a constitutional right to make an amendment, but we give that right up. What is the whole base closure procedure about? We cannot amend the base closure package. Those are the rules we operate under. It is yes or no. That is the way it is with fast track. We, in approving fast track, have said to ourselves we in Congress are not the kind of people to deal with trade agreements if we can amend them.

Mr. DODD. Will my colleague yield further?

Mr. CHAFEE. Because every nation negotiating with the United States of America would say beware, do not agree on anything because that is just the starting point. Wait

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until Congress gets its hands on that agreement.

So at the urging of our Special Trade Representatives, our Presidents, our Secretaries of State, Secretaries of Commerce, we over many, many years in this body have agreed to the fast-track procedure so that meaningful trade agreements that involve literally hundreds, scores of nations — indeed, I think in the GATT instance it is something close to 160 nations — can enter into negotiations with the U.S. representatives with confidence that whatever is agreed to is going to be it, yes or no, but it is not going to be whittled away by Members of Congress, U.S. Senators and Representatives.

. . . .

Mr. STEVENS. My friend [Mr. Chafee] and I are of the same generation. We are the Lindbergh generation, literally, and we use "we" too often. "We," he says, have given away our rights. That law was passed in 1974. How many of us were here in 1974? Can one Congress bind a subsequent Congress 29 years later? Are you saying those who were here 29 years ago gave away rights of new Senators here to represent a State? What am I hearing? I do not believe my ears.

. . . .

There are only 16 Senators here today who were Members of this body in 1974. Let me repeat that, 16 Senators voted on the 1974 bill, and my friend from Rhode Island [Mr. Chafee] says we waived our rights. As a matter of fact, I voted against the 1988 trade bill which granted the President the authority to negotiate NAFTA under the fast track.

. . . .

Mr. CHAFEE. I previously said there are 160 nations involved with GATT. It has been pointed out I was wrong. There are 108 nations. Still, it is a lot of nations.

Second, the Senator from Alaska [Mr. Stevens] has vigorously stated that we did not give up any of our rights. The fact is we authorized the fast track. If I might have the attention of the Senator from Alaska [Mr. Stevens], because he was quite concerned about this matter, we authorized fast track in 1988. We authorized fast track in 1988. Everybody was here then; nearly everybody — 1988. That was 4 years ago. And we extended it in May 1991. That is not back in 1974. And we extended it for GATT in June 1993.

So this idea that somehow we are being hornswoggled by a whole series of votes that were taken years before anybody came to the Senate, a bunch of decrepit Senators are the only ones that can remember that, is not quite true.

We authorized fast track in 1988. We extended it in May 1991. We extended it for GATT in June 1993. That is quite recent, I would say.

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Mr. HOLLINGS. . . .

I just happened in on the comments made by the distinguished colleague from Rhode Island [Mr. Chafee], that the constitutional point of order made by the distinguished Senator from Alaska [Mr. Stevens], was dangerous. I just had to get out of my chair, because I strongly disagree.

It is not the Constitution that is dangerous, it is this fast track procedure. The fact of the matter is everyone knows in their own hearts and minds that this fast track thing is a political fix. What happens, is that the President calls over and says he is about to get an agreement with a particular country or group of countries and asks the Congress to support him and give him a vote of confidence and vote for a procedure that limits our ability to amend or even discuss his agreement. And he asks us to do this before we have even seen it. And we all say, well, we don't question the fact that you are doing what is in the best interests of the country, so yes, we will go along with fast track.

Then, when the time comes to debate it, the right time to raise that point of order — oh, no, you do not have any time. They come under your nose with a watch. And they say, Wait a minute. I have to catch a plane. How much longer are you going to talk?

So the whole thing is arranged. The bottom line question is whether or not under the Constitution we can delegate this to the Executive or really, more specifically, whether we can amend the Constitution with a simple bill. The Constitution says we can amend any bill. This fast-track legislation is one.

In his Farewell Address George Washington said, "If, in the opinion of the people, the distribution or modification of the constitutional powers, be, in any particular wrong, let it be corrected by an amendment in the way which the Constitution designates. But let there be no change by usurpation; for though this, in one instance, may be the instrument for good, it is the customary weapon by which free governments are destroyed. The precedent must always greatly overbalance, in permanent evil, any partial or transient benefit."

Now, Mr. President, can this Congress amend the Constitution, in the one instance, if they think it be the instrument of good to facilitate an agreement or treaty with one nation, or 108 or 138? I do not think so.

I hope the Senate will join in with the Senator from Alaska [Mr. Stevens] on his appeal of the ruling of the Chair, because though it might have been in this particular instance the instrument of the good, article I, section 8 of the United States Constitution says the Congress — not the President, not the Supreme Court, not the Secretary of State, not the Executive — "the Congress shall regulate foreign commerce."

Senators should ask themselves if we can go so far in fast track as to eliminate our

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constitutionally mandated duty to regulate foreign commerce and eliminate our ability to amend a bill that is before us.

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Mr. BAUCUS. . . .

It is important for Senators to realize once again that if this amendment passes, it is the end of NAFTA, it is the end of any trade agreement that this country can reach with any country. It will be the end of the Uruguay round, because if this amendment passes, there will be other amendments, and we can all conjure up a multitude of different kinds of ideas, different amendments that come before this body that would drag down NAFTA. Then we would have to have a conference with the House. The House would then, too, reconsider NAFTA. A whole host of possible amendments. It would be all over, the end of NAFTA.

In addition, Mr. President, it would mean the end of the Uruguay round. France, Japan, Canada, no country would negotiate with the United States in the Uruguay round because they could not trust the President to be able to carry and deliver the Congress because once the President went to Congress with an agreement, any Member of Congress would stand up and offer any amendment under the sun. That would be the end of it.

So this is not only a killer amendment, Mr. President. This is a serial killer amendment. This kills any potential trade agreement. It is all over. And if we worried about abdicating our national responsibility by killing NAFTA, if we pass this amendment, we are abdicating it all. We are saying to all countries, forget it, the United States is not a player. The United States is not going to enter into trade agreements in this new world, new global economy, and where we are also interrelated environmentally, labor provisions, and what not.

So I strongly urge Senators to vote to sustain the appeal of the ruling of the Chair.

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Mr. DOLE. Mr. President, first, let me indicate that the Senator from Alaska [Mr. Stevens] is one of the most resourceful Members I have ever known in the U.S. Senate. I have listened in my office to much of his debate. He has given us this information in policy and other meetings on our side of the aisle. I think he makes probably a pretty good case.

But the question is whether or not we are going to pass NAFTA, the North American Free-Trade Agreement. As much as I respect my friend from Alaska [Mr. Stevens], it seems to me if we vote against the Chair's ruling, it is a vote to kill NAFTA. If that is what the Members want to do, there is certainly an opportunity to do it.

I think it is going to be very difficult, if you support the amendment, to say you are

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for NAFTA. That is the only point I make. I want the NAFTA to pass.

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It seems to me that we have now decided how we are going to treat trade agreements. I hope we can defeat the amendment and move on with the debate. . . .

. . . .

Mr. MITCHELL. . . .

Mr. President, I, too, will speak briefly with respect to the amendment. I really cannot say any more than to associate myself with the remarks of the Republican leader [Mr. Dole].

The Senator from Alaska [Mr. Stevens] is extremely resourceful, one of the most effective Members of this Senate, and he is also a good friend; I have great respect for him. I simply say that whatever the intention of this amendment, there is no doubt about what the effect will be if this amendment is adopted. There will not be a North American Free-Trade Agreement approved.

Therefore, for that and a variety of other reasons, I hope that the Senate will reject this amendment. I hope that Senators who support the North American Free-Trade Agreement will see it in that light. As the minority leader [Mr. Dole] has just stated, you really cannot say you are for the agreement and then vote for an amendment that will kill the agreement. I limit my comments to that.

There are a whole variety of other reasons why I believe the amendment should not be approved, but they have been debated at length skillfully by the Senators from Montana [Mr. Baucus], Missouri [Mr. Danforth], Rhode Island [Mr. Chafee], and others, and I know that perhaps the person most significantly affected by this is the chairman of the Finance Committee [Mr. Moynihan], who I know will say a few words about it now.

Therefore, I conclude by simply urging all Senators to join in support of the North American Free-Trade Agreement and in opposition to this amendment.

. . . .

Mr. MOYNIHAN. Mr. President, I rise simply to speak from a longer perspective. We have at issue here a mode of reaching trade agreements which was begun in 1934 in the Reciprocal Trade Agreements Act of that year, in the aftermath of the disaster of the Smoot-Hawley Tariff Act. That act, in which we added 20,000 individual tariff increases on this floor, brought us to a 60 percent tariff rate, and brought the world and our own Nation's economy into ruin. In the aftermath, we said we cannot do it that way.

We proceeded happily in tariff negotiations through the Kennedy Round, which

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began in 1962 under the Trade Expansion Act of that year. The Kennedy round, signed June 30, 1967, contained provisions dealing with nontariff items. Increasingly, trade negotiators have found that not tariffs, but quotas and subsidies and such like, restrictions on who may conduct what kind of business, are the most important aspects of world trade. When the Administration addressed several of ours in the Kennedy round, Congress refused to abide by them. Our trading partners then refused to negotiate further.

In 1974, accordingly, we adopted the fast-track procedure that we are under tonight. We did so in clear conformity with article I, section 5, clause 2 of the Constitution, which provides that each House may determine the rules of its proceedings.

As much as I share the concerns which the Senator from Alaska [Mr. Stevens] so ably set forth, I say do not put our whole trading negotiating position in the world in jeopardy. The Uruguay Round of the General Agreement on Tariffs and Trade is to be concluded on December 15, scarcely a month away. Seven years in the making.

If it is thought in these final hours in Geneva that agreements reached with the U.S. Representatives of the President, who negotiate, will not be kept by the Congress, which legislates, we will not have a Uruguay round, and a moment of potentially great advantage to the world, and most particularly to our Nation, will have been lost on a procedural vote, on an issue which we can return to next year. If the Senator from Alaska [Mr. Stevens] wishes the Committee on Finance to address it, we will do so. I urge us to oppose this measure.

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Mr. STEVENS. . . .

. . . I say to the Senate that I am saddened in many ways. I only seek to delete extraneous material from a bill that was designed to approve a trade agreement. I hope that perhaps I have been able to put a mark on the wall. I thank the Senator from New York [Mr. Moynihan] for his commitment that the Finance Committee will review the fast-track procedure in the 1974 Trade Act. We ought to have the right to exclude extraneous matters from these bills, matters that really are not required by the trade agreement.

I agree we may have to have some sort of fast-track procedures considering trade bills, but only to the extent that it is absolutely required. Trade agreements are extraordinary. They are not designed for treaties. That is why we have a fast track.

Mr. President, the law we passed in 1974 was clear. The fast track was permissible, and the bill that prevents the fast-track approval for the trade agreement designated what could be in it. We are ignoring that. How do we expect judges to really interpret the laws we write if we are unwilling to abide by them ourselves? How do we expect "John Q. Citizen" to really respect and adhere to the laws we help pass if we are unwilling to adhere to them ourselves?

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I think an arbitrary procedure in a bill passed in 1974, when only 16 of the Senators here were present, should not be binding on this Senate to the extent that it prohibits us from deleting from a bill extraneous matters which are not trade agreements, which were not negotiated within the timeframe we gave the President to negotiate trade agreements and which, by definition, are executive agreements which create 34 new entities of Government that will cost the taxpayers in this country thousands and millions of dollars to come.

I think it is wrong. I urge the Senate to overrule the Chair. I thank the leaders for their cooperation. . . .

. . . .

Mr. STEVENS. Mr. President, there has been discussion as to why I have proceeded in this fashion and I would like to explain.

It was possible for us to have a vote on the constitutional question, which I have avoided. I have avoided it particularly for the reason that the Senator from New York [Mr. Moynihan] has just indicated. He is willing, as the chairman of the Finance Committee, to explore with us issues I have raised today regarding the fast-track procedure of the 1974 Trade Act.

I did not want to set a precedent which would bind future Senates to an issue which I think we ought not to bind ourselves to now. We ought to try to amend this law and make it effective rather than establish a precedent other Senates might later not want and find it hard to undo.

We are merely appealing the ruling of the Chair that denies me the right to offer my amendment. We are not voting on the constitutional question. I thank the Senator from Connecticut [Mr. Dodd] for mentioning that to me.

I assure the Senate that I, too, respect the historic traditions of our body. I would not want to establish that precedent in this matter. I do not think it would be right. I do think we ought to correct the law, and my friend from New York [Mr. Moynihan] is in a position to help us do so.

. . . .

Mr. HOLLINGS. Mr. President, I thank the distinguished Senator from Alaska [Mr. Stevens].

Each one has his or her reasons and rationale for their vote. My reason is fundamental. I do not think you can amend the Constitution by a simple act of Congress.

Under the Constitution we have a right to amend this bill, any bill. I feel very

(continued...)

[57](...continued)
strongly that that is constitutionally provided. I think fast track is an attempt to amend the Constitution to disallow any amending of this particular agreement or treaty.

While he describes his vote in the appeal of the Chair not a constitutional question, I describe mine as very fundamentally constitutional.

I thank the distinguished Senator.

The PRESIDING OFFICER. The question is, Shall the decision of the Chair that the amendment offered by the Senator from Alaska [Mr. Stevens] is prohibited under section 151 of the Trade Act of 1974, 19 U.S.C. 2191(d), stand as the judgment of the Senate.

On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. FORD. I announce that the Senator from North Dakota [Mr. Dorgan] is necessarily absent.

The PRESIDING OFFICER (Mr. Leahy). Are there any other Senators in the Chamber desiring to vote?

The result was announced — yeas 73, nays 26, as follows:

[See roll-call vote number 389.]

So the ruling of the Chair was sustained as the judgment of the Senate.

The PRESIDING OFFICER (Mr. Leahy). The Senator from Alaska [Mr. Stevens].

Mr. STEVENS. Mr. President, that was not an unanticipated result, but in view of it I shall not pursue the other amendments and points of order I had in mind concerning this bill.

I do want to thank my able assistants, Christine Ciccone, from the Rules Committee, my Legislative Director, Earl Comstock, and my administrative assistant and chief of staff, Lisa Sutherland.

I do thank the Senators for their cooperation. I look forward to working with the Members of the Senate to change the basic 1974 trade law. We should have the same rights to strike extraneous material and materials not absolutely essential to the trade agreements from any fast track consideration.

139 Cong Rec S16,352-3, S16,356-65 (daily ed. Nov. 19, 1993).

(continued...)

[57](...continued)
Interpreting this precedent, the House Parliamentarian has written:

> The Senate has affirmed its constitutional authority to enact a statutory rule (as in subsection (d) of section 151) prohibiting amendments to specified revenue bills in derogation of its constitutional authority to propose amendments to House revenue bills (presiding officer sustained on appeal) (Nov. 19, 1993, p. 30641).

CHARLES W. JOHNSON, CONSTITUTION, JEFFERSON'S MANUAL, AND RULES OF THE HOUSE OF REPRESENTATIVES § 1130(11D), at 1072 (2001) (H. Doc. 106-320).

Congressional Research Service Specialist in the Legislative Process Richard Beth has explained the prohibition of amendment and its significance:

> **Prohibiting Amendment**
>
> The expedited procedures for trade agreements address the objective of preventing Congress from altering a bill to implement a trade agreement by establishing a single blanket prohibition on amendment (Section 151(d)). The prohibition covers not only initial floor action in each house, but also any attempt by either house to amend an implementing bill received from the other. Neither house may suspend this prohibition, either by motion or unanimous consent.
>
> **Committee Amendments.** The expedited procedures for trade agreements include no explicit reference to committee amendments, but none is required. In both houses, committees technically only recommend amendments to the floor. Although Section 151 would not prevent a committee from recommending amendments, the prohibition on floor amendment would prevent either house from considering or adopting them. These procedures also do not prevent a committee from reporting an original bill or clean bill, whose text might incorporate committee amendments to the original measure. The original or clean bill, however, would not qualify for expedited consideration. Only the implementing bill introduced pursuant to the President's submission of the trade agreement would be eligible for consideration by these procedures.
>
> **House-Senate Differences.** Because the implementing bills introduced in each house must be identical and cannot be amended, the implementing bills initially passed by each chamber must be identical. As a result, no occasion can arise for resolving such differences, either through a House-Senate conference or through motions to concur in the position of the other house. Otherwise, either of these proceedings might become a means for introducing additional changes into the legislation.

RICHARD S. BETH, TRADE AGREEMENT IMPLEMENTATION: EXPEDITED PROCEDURES & CONGRESSIONAL CONTROL IN EXISTING LAW 6 (Nov. 26, 2001) (Cong. Res. Serv. no. RL31192) <http://www.congress.gov/erp/rl/pdf/RL31192.pdf>.

Motion to Suspend the Rules

Senate Standing Rule V provides for the suspension of the Rules. That rule provides (in

(continued...)

no motion to suspend the application of this subsection shall be in order in either House, nor shall it be in order in either House for the Presiding Officer to entertain a request to suspend the application of this subsection by unanimous consent.

[57](...continued)
part):

"No motion to suspend, modify, or amend any rule, or any part thereof, shall be in order, except on one day's notice in writing, specifying precisely the rule or part proposed to be suspended, modified, or amended, and the purpose thereof. Any rule may be suspended without notice by the unanimous consent of the Senate, except as otherwise provided by the rules."

Senate Rule V <http://rules.senate.gov/senaterules/rule05.htm>.

By precedent, suspension of the rules requires the vote of two-thirds of the Senators present, a quorum being present. ALAN S. FRUMIN, RIDDICK'S SENATE PROCEDURE 1271 (1992) ("Suspension of Rules") <http://www.gpoaccess.gov/riddick/1266-1272.pdf>.

Section 151(d) specifically prohibits motions to suspend the rules to allow amendment in the House or Senate. *See supra* p. 81. But if Senate Rule V allows Senators to suspend rules as a general matter, might it also allow the Senate to suspend the prohibition against suspending the rules in section 151(d)?

There appears to be no precedent demonstrating the actual use of a motion to suspend the rules, under Senate Standing Rule V, to alter procedures under a public law enacted pursuant to the Senate (and House) rule-making power providing special procedures such as fast track and prohibition on amendment. In June of 2005, the Parliamentarian's office advised that discussions in ALAN S. FRUMIN, RIDDICK'S SENATE PROCEDURE 1266, 1271 (1992) ("Suspension of Rules") <http://www.gpoaccess.gov/riddick/1266-1272.pdf>, indicate that such suspension motions would be in order. The precedent cited there, on April 22, 1985, involved filed notices of suspension to allow amendments to joint resolutions on paramilitary operations in Nicaragua, otherwise not amendable as provided for under Public Law 98-473.

Riddick's says:

"An amendment offered to a measure which by the provisions of public law was to be unamendable, but which might be called up by a suspension of the rules, need not be germane to the measure proposed.

". . . .

"On one occasion, four notices were filed of intention to move to suspend that portion of the rules contained in a public law which had been enacted as an exercise of the rulemaking power of Congress and which by its own provisions was deemed a part of the rules of each House."

ALAN S. FRUMIN, RIDDICK'S SENATE PROCEDURE 1266, 1271 (1992) ("Suspension of Rules") <http://www.gpoaccess.gov/riddick/1266-1272.pdf>.

Riddick's cites 131 CONG. REC. 8618 (Apr. 22, 1985).

§ 151(e) **(e) PERIOD FOR COMMITTEE AND FLOOR CONSIDERATION. —**

§ 151(e)(1) **(1) Except as provided in paragraph (2),[58] if the committee or committees of either House to which an implementing bill[59] or approval resolution[60] has been referred have not reported it at the close of the 45th day[61] after its introduction, such committee or committees shall be automatically discharged from further consideration of the bill or resolution and it shall be placed on the appropriate calendar.[62] A vote[63] on final**

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[58] Section 151(e)(2) provides special procedures for "an implementing revenue bill or resolution." *See infra* p. 103.

[59] Section 151(b)(1) defines "implementing bill." *See supra* p. 60.

[60] Section 151(b)(3) defines "approval resolution." *See supra* p. 72.

[61] Section 151(e)(3) excludes "any day on which that House is not in session." *See infra* p. 106.

[62] Pursuant to this subsection, on November 22, 1994, the Senate Committees on Commerce; Judiciary; and Labor and Human Resources were discharged of the Uruguay Round Agreements Act (URAA), S. 2467, 103d Cong. (1994).

[63] Votes on final passage of implementing bills have included:

for the United States-Oman Free Trade Agreement Implementation Act, H.R. 5684, 109th Cong. (2006); S. 3569, 109th Cong. (2006), see 152 CONG. REC. S6763 (daily ed. June 29, 2006) (60-34, Sen. vote no. 190) (vote on S. 3569); *id.* at H5529-30 (daily ed. July 20, 2006) (221-205, H. vote no. 392) (vote on H.R. 5684); *id.* at S9698-99 (daily ed. Sept. 19, 2006) (62-32, Sen. vote no. 250) (vote on H.R. 5684);

for the United States-Bahrain Free Trade Agreement Implementation Act, H.R. 4340, 109th Cong. (2005); S. 2027, 109th Cong. (2005), see 151 CONG. REC. H11,181 (daily ed. Dec. 7, 2005) (327-95, H. vote no. 616); *id.* at S13,508 (daily ed. Dec. 13, 2005) (passed Sen. by voice vote, with Democratic Leader Reid noting his opposition);

for the Dominican Republic-Central America-United States Free Trade Agreement Implementation Act (CAFTA), H.R. 3045, 109th Cong. (2005); S. 1307, 109th Cong. (2005), see 151 CONG. REC. S7755 (daily ed. June 30, 2005) (54-45, Sen. vote no. 170) (vote on S. 1307); *id.* at H6927-28 (daily ed. July 27, 2005) (217-215, H. vote no. 443) (vote on H.R. 3045); *id.* at S9255 (daily ed. July 28, 2005) (originally 56-44, changed to 55-45, Sen. vote no. 209) (vote on H.R. 3045); *id.* at S9440 (July 29, 2005) (Sen. Specter changed his vote from aye to no, creating the total of 55-45);

(continued...)

passage of the bill or resolution shall be taken in each

[63](...continued)

for the United States-Morocco Free Trade Agreement Implementation Act, H.R. 4842, 108th Cong. (2004); S. 2677, 108th Cong. (2004), see 150 CONG. REC. S8510 (daily ed. July 21, 2004) (85-13, Sen. vote no. 159) (vote on S. 2677); *id.* at H6649-50 (daily ed. July 22, 2004) (323-99, H. vote no. 413) (vote on H.R. 4842); *id.* at S8633 (daily ed. July 22, 2004) (H.R. 4842 passed Sen. by unanimous consent);

for the United States-Australia Free Trade Agreement Implementation Act, H.R. 4759, 108th Cong. (2004); S. 2610, 108th Cong. (2004), see 150 CONG. REC. H5720 (daily ed. July 14, 2004) (314-109, 1 present, H. vote no. 375); *id.* at S8216-17 (daily ed. July 15, 2004) (80-16, Sen. vote no. 156);

for the United States-Chile Free Trade Agreement Implementation Act, H.R. 2738, 108th Cong. (2003), S. 1416, 108th Cong. (2003), see 149 CONG. REC. H7514-15 (daily ed. July 24, 2003) (270-156, H. vote no. 436); *id.* at S10,588 (daily ed. July 31, 2003) (originally 66-31, changed to 65-32, Sen. vote no. 319); *id.* at S11,024 (daily ed. Sept. 3, 2003) (Sen. Mikulski changed her vote from aye to no, creating the total of 65-32);

for the United States-Singapore Free Trade Agreement Implementation Act, H.R. 2739, 108th Cong. (2003), S. 1417, 108th Cong. (2003), see 149 CONG. REC. H7511-12 (daily ed. July 24, 2003) (272-155, H. vote no. 432); *id.* at S10,585-86 (daily ed. July 31, 2003) (65-31, Sen. vote no. 318);

for the Uruguay Round Agreements Act (URAA), H.R. 5110, 103d Cong. (1994), S. 2467, 103d Cong. (1994), see 140 CONG. REC. H11,535-36 (daily ed. Nov. 29, 1994) (288-146, H. vote no. 507); *id.* at S15,379 (daily ed. Dec. 1, 1994) (76-24, Sen. vote no. 329);

for the North American Free Trade Agreement Implementation Act (NAFTA), see 139 CONG. REC. H10,048 (daily ed. Nov. 17, 1993) (234-200, H. vote no. 575); *id.* at S16,712-13 (daily ed. Nov. 20, 1993) (61-38, Sen. vote no. 395);

for the United States-Canada Free Trade Agreement Implementation Act of 1988, H.R. 5090, 100th Cong. (1988); S. 2651, 100th Cong. (1988), see 134 CONG. REC. H6665 (daily ed. Aug. 9, 1988) (366-40, H. vote no. 267); *id.* at S12,857 (daily ed. Sept. 19, 1988) (83-9, Sen. vote no. 332);

for the United States-Israel Free Trade Area Implementation Act of 1985, H.R. 2268, 99th Cong. (1985); S.1114, 99th Cong. (1985), see 131 CONG. REC. H2898 (daily ed. May 7, 1985) (422-0, H. vote no. 97); *id.* at 13,577 (May 23, 1985) (passed Sen. by voice vote); and

for the Trade Agreements Act of 1979, H.R. 4537, 96th Cong. (1979), see 125 CONG. REC. 18,017 (July 11, 1979) (395-7, H. vote no. 309); 125 CONG. REC. 20,194 (July 23, 1979) (90-4, Sen. vote no. 212).

House on or before the close of the 15th day[64] after the bill or resolution is reported by the committee or committees of that House to which it was referred, or after such committee or committees have been discharged from further consideration of the bill or resolution.[65] If

[64] Section 151(e)(3) excludes "any day on which that House is not in session." *See infra* p. 106.

[65] The Senate Finance Committee report on what would become the Trade Act of 1974 states with regard to the period for committee and floor consideration generally:

> Under the Committee bill there is virtual assurance that a nontariff barrier agreement or bilateral commercial agreement with a communist nation which enters into such agreement after the passage of this bill would be voted on, on its merits, within 60 days during which each House considering the implementing legislation is in session (or, in the case of a revenue bill, which must originate in the House, within 90 days).
>
> . . . .
>
> *Section 151(e). Period for Committee and Floor Consideration.* — After referral to committee, an implementing bill or resolution of approval would be reported within 45 days (during which that House is in session) after introduction. If it is not reported within such time, the committee or committees considering the bill or resolution would be automatically discharged from further consideration and the bill or resolution would be placed on the calendar of the appropriate House. A final vote would be taken by each House within 15 days in which that House is in session after the bill or resolution is reported from committee or the committee or committees are discharged from further consideration of the bill or resolution.

S. REP. NO. 93-1298, at 107, 109 (1974).

The House Ways and Means Committee report on what would become the Trade Act of 1974 states with regard to the period for committee consideration and discharge:

> The bill, therefore, provides for the consideration of resolutions disapproving the entering into trade agreements on distortions of trade or disapproving certain other actions as discussed above. A resolution respecting the subject matter described may be referred to the Committee on Ways and Means of the House of Representatives and to the Committee on Finance of the Senate, as well as other committees of original jurisdiction with respect to the entering into force of trade agreements on distortions of trade. The bill provides that resolutions disapproving the actions proposed by the President may be discharged from the appropriate committee if no action has been taken by such committee at the end of the 7 calendar days.
>
> Such a motion to discharge is highly privileged and may be made only by an individual favoring the resolution, and the debate on such a motion should be limited to

(continued...)

prior to the passage by one House of an implementing bill[66] or approval resolution of that House, that House receives the same implementing bill or approval resolution from the other House, then —

§ 151(e)(1)(A) **(A) the procedure in that House shall be the same as if**

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[65](...continued)
not more than 1 hour, time to be equally divided between the opponents and proponents. An amendment to the motion is not in order and it will not be in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

When the committee to which the resolution has been referred has reported, or has been discharged from further consideration of, a resolution, it will be in order at any time thereafter to proceed to the consideration of the resolution, and such motion is highly privileged and is not debatable. Debate on the resolution shall be limited to no more than 10 hours to be equally divided between opponents and proponents.

If, at the end of 90 days after the date which a document referred to in sections 102(f), 204(b), 302(b), or 406(a) or (b) has been transmitted to the Congress, neither House has acted favorably on a motion to disapprove of the action proposed to be taken by the President, such action will become effective.

. . . .

Section 151(d)(1) provides that if the committee to which a resolution provided for in section 151 has been referred has not reported it at the end of 7 calendar days after its introduction, it is in order to move either to discharge the committee from further consideration of the resolution or to discharge the committee from further consideration of any other resolution with respect to the agreement or action which has been referred to the committee.

Section 151(d) (2) provides that (1) a motion to discharge may be made only by an individual favoring the resolution and is highly privileged (except that it may not be made after the committee has reported a resolution with respect to the same matter), (2) debate thereon shall be limited to not more than 1 hour, to be divided equally between those favoring and those opposing the resolution, and (3) an amendment to the motion is not in order, and it is not in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

Section 151(d)(3) provides that if the motion to discharge is agreed to or disagreed to, the motion may not be renewed, nor may another motion to discharge the committee be made with respect to any other resolution with respect to the same matter.

H.R. REP. NO. 93-571, at 42, 109 (1973).

[66] Section 151(b)(1) defines "implementing bill." *See supra* p. 60.

no implementing bill or approval resolution had been received from the other House; but

§ 151(e)(1)(B) **(B) the vote on final passage shall be on the implementing bill or approval resolution of the other House.**

§ 151(e)(2) **(2) The provisions of paragraph (1)[67] shall not apply[68] in the Senate to an implementing revenue bill or resolution.[69] An**

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[67] *See supra* p. 99.

[68] In June 2005, the Office of the Parliamentarian advised that notwithstanding the language of this paragraph that "The provisions of paragraph (1) shall not apply", the provisions of section 151(e)(1)(B) regarding the vote on final passage shall apply in the case of implementing revenue bills. Thus, if during the Senate's consideration of an S-numbered implementing revenue bill, the Senate receives the House-passed H-numbered implementing revenue bill, then when Senators have used or yielded back all time for debate, the Senate will vote on final passage of the H-numbered implementing revenue bill.

If, however, the Senate considers an S-numbered implementing revenue bill and the Senate does not receive the House-passed H-numbered implementing revenue bill before Senators have used or yielded back all time for debate, then the Senate will vote on final passage of the S-numbered implementing revenue bill. Thereafter, when the Senate receives the House-passed H-numbered implementing revenue bill, the Senate may debate that bill for another 20 hours.

The Senate proceeded to an S-numbered implementing revenue bill (S. 1307, 109th Cong. (2005)) when it considered the Dominican Republic-Central America-United States Free Trade Agreement Implementation Act (CAFTA). *See* 151 CONG. REC. S7597-98 (daily ed. June 29, 2005). And the Senate voted on final passage of that S-numbered implementing revenue bill. *See id.* at S7755 (daily ed. June 30, 2005). The Senate subsequently took up and passed the companion H-numbered implementing revenue bill (H.R. 3045, 109th Cong. (2005)). *See* 151 CONG. REC. S9244, S9255 (daily ed. July 28, 2005).

Similarly, the Senate proceeded to an S-numbered implementing revenue bill (S. 3569, 109th Cong. (2006)) when it considered the United States-Oman Free Trade Agreement Implementation Act. *See* 152 CONG. REC. S6746 (daily ed. June 29, 2006). And the Senate voted on final passage of that S-numbered implementing revenue bill. *See id.* at S6763. The Senate subsequently took up and passed the companion H-numbered implementing revenue bill (H.R. 5684, 109th Cong. (2006)). *See* 152 CONG. REC. S9698-99 (daily ed. Sept. 19, 2006).

[69] Section 151(b)(2) defines "implementing revenue bill or resolution." *See supra* p. 71. The Customs and Trade Act of 1990, Pub. L. No. 101-382, § 132(b)(2)(D), 104 Stat. 629, 645 (Aug. 20, 1990), added "or resolution" here.

implementing revenue bill or resolution[70] received from the House shall be referred to the appropriate committee or committees of the Senate.[71] If such committee or committees have not reported such bill or resolution[72] at the close of the 15th day[73] after its receipt by the Senate (or, if later, before the close of the 45th day[74] after the corresponding implementing revenue bill or resolution[75] was introduced in the Senate), such committee or committees shall be automatically discharged from further consideration of such bill or resolution[76] and it shall be placed on the calendar. A vote on final passage of such bill or resolution[77] shall be taken in the Senate on or

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[70] Section 151(b)(2) defines "implementing revenue bill or resolution." *See supra* p. 71. The Customs and Trade Act of 1990, Pub. L. No. 101-382, § 132(b)(2)(D), 104 Stat. 629, 645 (Aug. 20, 1990), added "or resolution" here.

[71] The Office of the Parliamentarian advised in June 2005 that notwithstanding this language requiring referral to committee, if the appropriate Senate committee or committees had already reported the S-numbered implementing revenue bill, and then the Senate received a House-passed H-numbered implementing revenue bill, then the Presiding Officer would place the House implementing revenue bill directly on the calendar, consistent with the Senate's precedents on companion bills. *See* ALAN S. FRUMIN, RIDDICK'S SENATE PROCEDURE 1161 (1992) ("House-Passed Bills and Like Senate Bills, No Reference of") <http://www.gpoaccess.gov/riddick/1038-1078.pdf>.

[72] The Customs and Trade Act of 1990, Pub. L. No. 101-382, § 132(b)(2)(E), 104 Stat. 629, 645 (Aug. 20, 1990), added "or resolution".

[73] Section 151(e)(3) excludes "any day on which that House is not in session." *See infra* p. 106.

[74] Section 151(e)(3) excludes "any day on which that House is not in session." *See infra* p. 106.

[75] Section 151(b)(2) defines "implementing revenue bill or resolution." *See supra* p. 71. The Customs and Trade Act of 1990, Pub. L. No. 101-382, § 132(b)(2)(D), 104 Stat. 629, 645 (Aug. 20, 1990), added "or resolution" here.

[76] The Customs and Trade Act of 1990, Pub. L. No. 101-382, § 132(b)(2)(E), 104 Stat. 629, 645 (Aug. 20, 1990), added "or resolution".

[77] The Customs and Trade Act of 1990, Pub. L. No. 101-382, § 132(b)(2)(E), 104 Stat. 629, 645 (Aug. 20, 1990), added "or resolution".

before the close of the 15th day[78] after such bill or resolution[79] is reported by the committee or committees of the Senate to which it was referred, or after such committee or committees have been discharged from further consideration of such bill or resolution.[80]

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[78] Section 151(e)(3) excludes "any day on which that House is not in session." *See infra* p. 106.

[79] The Customs and Trade Act of 1990, Pub. L. No. 101-382, § 132(b)(2)(E), 104 Stat. 629, 645 (Aug. 20, 1990), added "or resolution".

[80] The Customs and Trade Act of 1990, Pub. L. No. 101-382, § 132(b)(2)(E), 104 Stat. 629, 645 (Aug. 20, 1990), added "or resolution".

Some speak of a 90-day period for consideration of implementing revenue bills. They get to 90 days by summing 45 days in House committee (see section 151(e)(1)), 15 days until disposition of House floor (id.), 15 days in Senate committee (see this paragraph), plus 15 days until disposition on Senate floor (id.).

The Senate Finance Committee report on what would become the Trade Act of 1974 states with regard to the period for consideration of implementing revenue bills:

> Under the Committee bill there is virtual assurance that a nontariff barrier agreement or bilateral commercial agreement with a communist nation which enters into such agreement after the passage of this bill would be voted on, on its merits, within 60 days during which each House considering the implementing legislation is in session (or, in the case of a revenue bill, which must originate in the House, within 90 days).
>
> . . . .
>
> An exception to the general time limit is made for implementing bills which, because they are revenue bills, must initiate in the House of Representatives. In such cases, the appropriate Senate committees would have an extra 15 "legislative" days for consideration of the bill before it must be reported. Under section 151, a vote on final passage would be taken in the Senate on or before the close of the 15th day after such bill is reported by the committee(s) of the Senate to which it was referred, or after such committees have been discharged from further consideration of the bill.

S. REP. NO. 93-1298, at 107, 109 (1974). Note that the law as enacted does not count "legislative" days, but days on which the Senate is in session. *See* section 151(e)(3), p. 106.

§ 151(e)(3) **(3) For purposes of paragraphs (1)[81] and (2),[82] in computing a number of days in either House, there shall be excluded any day on which that House is not in session.**

§ 151(f) **(f) FLOOR CONSIDERATION IN THE HOUSE.[83] —**

[81] *See supra* p. 99.

[82] *See supra* p. 103.

[83] The Senate Finance Committee report on what would become the Trade Act of 1974 states with regard to floor consideration in the House:

> *Section 151(f) and (g). Floor Consideration in the House and Senate.* — These sections would limit the time for floor debate in both the House and the Senate and the motions which could be made in connection with an implementing bill or approval resolution. Because the rules of each House differ, the procedures governing floor debate set forth in these sections differ somewhat.
>
> In both the House and the Senate, motions to consider implementing bills and approval resolutions would be highly privileged ("privileged" in the Senate) and not debatable. Amendments to such motions would not be in order nor would a motion to reconsider such motions.
>
> In the House: (a) Debate would be limited to 20 hours, evenly divided between those favoring and those opposing the bill or resolution; motions to recommit or reconsider a vote by which a bill or resolution is agreed or disagreed would not be in order.
>
> (b) Motions to postpone consideration and to proceed to other business would be decided without debate.

S. REP. NO. 93-1298, at 109-10 (1974).

The House Ways and Means Committee report on what would become the Trade Act of 1974 states with regard to floor consideration:

> When the committee to which the resolution has been referred has reported, or has been discharged from further consideration of, a resolution, it will be in order at any time thereafter to proceed to the consideration of the resolution, and such motion is highly privileged and is not debatable. Debate on the resolution shall be limited to no more than 10 hours to be equally divided between opponents and proponents.
>
> If, at the end of 90 days after the date which a document referred to in sections 102(f), 204(b), 302(b), or 406(a) or (b) has been transmitted to the Congress, neither House has acted favorably on a motion to disapprove of the action proposed to be taken by the President, such action will become effective.

(continued...)

§ 151(f)(1)

(1) A motion in the House of Representatives to proceed to the consideration of an implementing bill[84] or approval resolution[85] shall be highly privileged and not debatable. An amendment to the motion shall not be in order, nor shall it be in order to move to reconsider the vote by which the motion is agreed to or disagreed to.[86]

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[83](...continued)

. . . .

Section 151(e) (1) provides that when the committee has reported, or has been discharged from further consideration of, a resolution, it is at any time thereafter in order (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of the resolution. The motion is highly privileged and is not debatable, an amendment to the motion is not in order, and it is not in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

Section 151(e) (2) provides that debate on the resolution shall be limited to not more than 10 hours, which shall be divided equally between those favoring and those opposing the resolution. It is also provided that a motion further to limit debate is not debatable; that an amendment to, or motion to recommit, the resolution is not in order; and that is not in order to move to reconsider the vote by which the resolution is agreed to or disagreed to.

Section 151(f) provides that (1) motions to postpone, made with respect to the discharge from committee or the consideration of a resolution and motions to proceed to the consideration of other business, shall be decided without debate, and (2) appeals from the decisions of the Chair relating to the application of the rules of the House or the Senate, as the case may be, to the procedure relating to any resolution shall be decided without debate.

H.R. REP. NO. 93-571, at 42, 109-10 (1973).

[84] Section 151(b)(1) defines "implementing bill." *See supra* p. 60.

[85] Section 151(b)(3) defines "approval resolution." *See supra* p. 72.

[86] The House Parliamentarian has written:

An implementing bill reported from committee has been considered as privileged under the Act (Nov. 14, 1980, p. 29617). The House has adopted a special order recommended by the Committee on Rules providing for the consideration of both a resolution to deny the extension of "fast track" procedures requested by the President under section 1103(b) of the Omnibus Trade and Competitiveness Act of 1988 and a resolution to express the sense of the House concerning U.S. negotiating objectives after such an extension (May 23, 1991, p. 12137).

(continued...)

§ 151(f)(2)

(2) Debate[87] in the House of Representatives on an implementing bill[88] or approval resolution shall be limited to not more than 20 hours, which shall be divided equally between those favoring and those opposing the bill or resolution.[89] A

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[86](...continued)
CHARLES W. JOHNSON, CONSTITUTION, JEFFERSON'S MANUAL, AND RULES OF THE HOUSE OF REPRESENTATIVES § 1130(11D), at 1071-72 (2001) (H. Doc. 106-320).

[87] For debate on implementing bills in the House of Representatives, see, *e.g.*:

for the United States-Oman Free Trade Agreement Implementation Act, H.R. 5684, 109th Cong. (2006), see 152 CONG. REC. H5506-30 (daily ed. July 20, 2006);

for the United States-Bahrain Free Trade Agreement Implementation Act, H.R. 4340, 109th Cong. (2005), see 151 CONG. REC. H11,163-79 (daily ed. Dec. 7, 2005);

for the Dominican Republic-Central America-United States Free Trade Agreement Implementation Act (CAFTA), H.R. 3045, 109th Cong. (2005), see 151 CONG. REC. H6884-928 (daily ed. July 27, 2005);

for the United States-Morocco Free Trade Agreement Implementation Act, H.R. 4842, 108th Cong. (2004), see 150 CONG. REC. H6615-50 (daily ed. July 22, 2004);

for the United States-Australia Free Trade Agreement Implementation Act, H.R. 4759, 108th Cong. (2004), see 150 CONG. REC. H5690-720 (daily ed. July 14, 2004);

for the United States-Singapore Free Trade Agreement Implementation Act, H.R. 2739, 108th Cong. (2003), see 149 CONG. REC. H7489-513 (daily ed. July 24, 2003);

for the United States-Chile Free Trade Agreement Implementation Act, H.R. 2738, 108th Cong. (2003), see 149 CONG. REC. H7459-89 (daily ed. July 24, 2003);

for the Uruguay Round Agreements Act (URAA), H.R. 5110, 103d Cong. (1994), see 140 CONG. REC. H11,441-91, H11,493-536 (daily ed. Nov. 29, 1994);

for the North American Free Trade Agreement Implementation Act (NAFTA), H.R. 3450, 103d Cong (1993), see 139 CONG. REC. H9875-10,040 (daily ed. Nov. 17, 1993).

[88] Section 151(b)(1) defines "implementing bill." *See supra* p. 60.

[89] The House Parliamentarian has written:

> Pursuant to section 151(f)(2) of this Act debate on any implementing revenue bill must be equally divided and controlled among those favoring and opposing the bill (absent unanimous-consent agreement for some other distribution of the time) . . . (July 10, 1979, pp. 17812-13).

(continued...)

motion further to limit debate shall not be debatable.[90] It shall not be in order to move to recommit an implementing bill[91] or approval resolution[92] or to move to reconsider the vote by which an implementing bill[93] or approval resolution is agreed to or disagreed to.

§ 151(f)(3)

(3) Motions to postpone, made in the House of Representatives with respect to the consideration of an implementing bill[94] or approval resolution,[95] and motions to proceed to the consideration of other business, shall be decided without debate.[96]

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[89](...continued)
CHARLES W. JOHNSON, CONSTITUTION, JEFFERSON'S MANUAL, AND RULES OF THE HOUSE OF REPRESENTATIVES § 1130(11D), at 1071 (2001) (H. Doc. 106-320).

[90] The House Parliamentarian has written:

> Pursuant to section 151(f)(2) of this Act . . . a motion to limit debate on such legislation must be made in the House, and not in the Committee of the Whole, and may be made either pending the motion to resolve into the Committee of the Whole or at a later time, after the Committee has risen without completing action on the bill (July 10, 1979, pp. 17812-13).

CHARLES W. JOHNSON, CONSTITUTION, JEFFERSON'S MANUAL, AND RULES OF THE HOUSE OF REPRESENTATIVES § 1130(11D), at 1071 (2001) (H. Doc. 106-320).

[91] Section 151(b)(1) defines "implementing bill." *See supra* p. 60.

[92] Section 151(b)(3) defines "approval resolution." *See supra* p. 72.

[93] Section 151(b)(1) defines "implementing bill." *See supra* p. 60.

[94] Section 151(b)(1) defines "implementing bill." *See supra* p. 60.

[95] Section 151(b)(3) defines "approval resolution." *See supra* p. 72.

[96] The House Parliamentarian has written with respect to the parallel paragraph of section 152 dealing with motions to postpone:

> Although a motion that the House resolve itself into the Committee of the Whole is not ordinarily subject to the motion to postpone indefinitely (VI, 726), the motion to postpone indefinitely may be offered pursuant to the provisions of this statute, is nondebatable, and represents final adverse disposition of the disapproval resolution

(continued...)

§ 151(f)(4) **(4) All appeals from the decisions of the Chair relating to the application of the Rules of the House of Representatives to the procedure relating to an implementing bill[97] or approval resolution[98] shall be decided without debate.**

§ 151(f)(5) **(5) Except to the extent specifically provided in the preceding provisions of this subsection, consideration of an implementing bill[99] or approval resolution[100] shall be governed by the Rules of the House of Representatives applicable to other bills and resolutions in similar circumstances.**

§ 151(g) **(g) FLOOR CONSIDERATION IN THE SENATE.[101] —**

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[96](...continued)
(Mar. 10, 1977, p. 7021).

CHARLES W. JOHNSON, CONSTITUTION, JEFFERSON'S MANUAL, AND RULES OF THE HOUSE OF REPRESENTATIVES § 1130(11D), at 1075 (2001) (H. Doc. 106-320).

The House Ways and Means Committee report on what would become the Trade Act of 1974 states with regard to motions to postpone: "Section 151(f) provides that (1) motions to postpone, made with respect to the discharge from committee or the consideration of a resolution and motions to proceed to the consideration of other business, shall be decided without debate . . . ." H.R. REP. NO. 93-571, at 110 (1973).

[97] Section 151(b)(1) defines "implementing bill." *See supra* p. 60.

[98] Section 151(b)(3) defines "approval resolution." *See supra* p. 72.

[99] Section 151(b)(1) defines "implementing bill." *See supra* p. 60.

[100] Section 151(b)(3) defines "approval resolution." *See supra* p. 72.

[101] The Senate Finance Committee report on what would become the Trade Act of 1974 states with regard to floor consideration in the Senate:

> *Section 151(f) and (g). Floor Consideration in the House and Senate.* — These sections would limit the time for floor debate in both the House and the Senate and the motions which could be made in connection with an implementing bill or approval resolution. Because the rules of each House differ, the procedures governing floor debate set forth in these sections differ somewhat.
>
> In both the House and the Senate, motions to consider implementing bills and approval resolutions would be highly privileged ("privileged" in the Senate) and not

(continued...)

[101](...continued)
debatable. Amendments to such motions would not be in order nor would a motion to reconsider such motions.

. . . .

In the Senate: (a) Debate on an implementing bill or approval resolution and all debatable motions in connection with either, would be limited overall to twenty hours; the time would be equally divided between the majority and minority leaders (or their designees).

(b) Debate on any debatable motion would be limited to one hour.

(c) Motions to recommit an implementing bill would not be in order and motions to limit debate would not be debatable.

S. REP. NO. 93-1298, at 109-10 (1974).

The House Ways and Means Committee report on what would become the Trade Act of 1974 states with regard to floor consideration:

When the committee to which the resolution has been referred has reported, or has been discharged from further consideration of, a resolution, it will be in order at any time thereafter to proceed to the consideration of the resolution, and such motion is highly privileged and is not debatable. Debate on the resolution shall be limited to no more than 10 hours to be equally divided between opponents and proponents.

If, at the end of 90 days after the date which a document referred to in sections 102(f), 204(b), 302(b), or 406(a) or (b) has been transmitted to the Congress, neither House has acted favorably on a motion to disapprove of the action proposed to be taken by the President, such action will become effective.

. . . .

Section 151(e) (1) provides that when the committee has reported, or has been discharged from further consideration of, a resolution, it is at any time thereafter in order (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of the resolution. The motion is highly privileged and is not debatable, an amendment to the motion is not in order, and it is not in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

Section 151(e) (2) provides that debate on the resolution shall be limited to not more than 10 hours, which shall be divided equally between those favoring and those opposing the resolution. It is also provided that a motion further to limit debate is not debatable; that an amendment to, or motion to recommit, the resolution is not in order; and that is not in order to move to reconsider the vote by which the resolution is agreed to or disagreed to.

(continued...)

§ 151(g)(1)

(1) A motion in the Senate to proceed to the consideration of an implementing bill[102] or approval resolution[103] shall be privileged and not debatable.[104]

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[101](...continued)

Section 151(f) provides that (1) motions to postpone, made with respect to the discharge from committee or the consideration of a resolution and motions to proceed to the consideration of other business, shall be decided without debate, and (2) appeals from the decisions of the Chair relating to the application of the rules of the House or the Senate, as the case may be, to the procedure relating to any resolution shall be decided without debate.

H.R. REP. NO. 93-571, at 42, 109-10 (1973).

[102] Section 151(b)(1) defines "implementing bill." *See supra* p. 60.

[103] Section 151(b)(3) defines "approval resolution." *See supra* p. 72.

[104] For an example of a roll-call vote on a motion to proceed, on proceeding to the Dominican Republic-Central America-United States Free Trade Agreement Implementation Act (CAFTA), S. 1307, 109th Cong. (2005), see 151 CONG. REC. S7598 (daily ed. June 29, 2005) (61-34, Sen. vote no. 169).

The consequences of privilege include:

> When a privileged matter is pending before the Senate for disposition, it is subject to any of the motions specified in Rule XXII.
>
> Privileged business . . . do not have to lie over a day before consideration.
>
> . . . .
>
> The consideration of privileged business or privileged matters . . . does not displace the unfinished business or pending business, but merely suspends its consideration until the privileged business is disposed of.
>
> . . . .
>
> A privileged matter under consideration in the Senate may be displaced by another privileged matter by a majority vote . . . . A motion to proceed to the consideration of a bill is not displaced by . . . the transaction of privileged business or business transacted by unanimous consent.

ALAN S. FRUMIN, RIDDICK'S SENATE PROCEDURE 1035-36 (1992) ("Privileged Business") <http://www.gpoaccess.gov/riddick/1034-1037.pdf>.

(continued...)

An amendment to the motion shall not be in order, nor shall it be in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

§ 151(g)(2) **(2) Debate[105] in the Senate on an implementing bill[106] or**

[104](...continued)

During the consideration of one privileged matter (for example, an S. numbered bill), the Senate's adoption of a motion to proceed to a second privileged matter (for example, an H.R. numbered bill), places the first matter (here, the S. bill) on the Calendar. *Cf.* 127 CONG. REC. S4871 (1981); Senate Precedent PRL19810512-001 (May 12, 1981) (response of the Chair to motion by Majority Leader Baker with regard to budget resolutions). In contrast, if the Senate agrees by unanimous consent to take up the second privileged matter, the result is different, leaving the first privileged matter pending at the end of consideration of the second privileged matter. *Compare* ALAN S. FRUMIN, RIDDICK'S SENATE PROCEDURE 664-65 (1992) (displacement by motion) <http://www.gpoaccess.gov/riddick/655-682.pdf>, *with id.* at 669 (displacement by unanimous consent).

[105] For debate on implementing bills in the Senate, see, for example:

for the United States-Oman Free Trade Agreement Implementation Act, H.R. 5684, 109th Cong. (2006); S. 3569, 109th Cong. (2006), see 152 CONG. REC. S6746-70 (daily ed. June 29, 2006); *id.* at S9654-57, S9694-99 (daily ed. Sept. 19, 2006);

for the United States-Bahrain Free Trade Agreement Implementation Act, H.R. 4340, 109th Cong. (2005); S. 2027, 109th Cong. (2005), see 151 CONG. REC. S13,507-08 (daily ed. Dec. 13, 2005);

for the Dominican Republic-Central America-United States Free Trade Agreement Implementation Act (CAFTA), H.R. 3045, 109th Cong. (2005); S. 1307, 109th Cong. (2005), see 151 CONG. REC. S7597-605 (daily ed. June 29, 2005); *id.* at S7647-95, S7697-739, S7750-66 (daily ed. June 30, 2005); *id.* at S9244-45, S9253-55 (daily ed. July 28, 2005);

for the United States-Morocco Free Trade Agreement Implementation Act, H.R. 4842, 108th Cong. (2004); S. 2677, 108th Cong. (2004), see 150 CONG. REC. S8460-67, S8506-16 (daily ed July 21, 2004); *id.* at S8633 (daily ed July 22, 2004);

United States-Australia Free Trade Agreement Implementation Act, H.R. 4759, 108th Cong. (2004); S. 2610, 108th Cong. (2004), see 150 CONG. REC. S8178-217 (daily ed July 15, 2004);

for the United States-Singapore Free Trade Agreement Implementation Act, H.R. 2739, 108th Cong. (2003), S. 1417, 108th Cong. (2003), see 149 CONG. REC. S10,023-24, S10,040, S10,076 (daily ed. July 28, 2003), *id.* at S10,490-503, S10,511-27, S10,530-33, S10,574-89 (daily ed July 31, 2003);

for the United States-Chile Free Trade Agreement Implementation Act, H.R. 2738, 108th Cong. (2003), S. 1416, 108th Cong. (2003), see 149 CONG. REC. S10,023-24, S10,040, S10,076

(continued...)

approval resolution,[107] and all debatable motions and appeals in connection therewith,[108] shall be limited to not more than 20 hours.[109] The time shall be equally divided between, and controlled by, the majority leader and the minority leader or their designees.[110]

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[105](...continued)
(daily ed. July 28, 2003), *id.* at S10,490-503, S10,511-27, S10,530-33, S10,574-89 (daily ed. July 31, 2003);

for the Uruguay Round Agreements Act (URAA), S. 2467, 103d Cong. (1994), see 140 CONG. REC. S15,077-165 (Nov. 30, 1994); *id.* at S15271-364 (Dec. 1, 1994);

for the North American Free Trade Agreement Implementation Act (NAFTA), S. 1627, 103d Cong (1993), H.R. 3450, 103d Cong (1993), see 139 CONG. REC. S16,005-53, S16,057-159 (daily ed. Nov. 18, 1993); *id.* at S16,351-66 (daily ed. Nov. 19, 1993); *id.* at S16,602-22, S16701-05, S16712-13 (daily ed. Nov. 20, 1993);

for the United States-Canada Free Trade Agreement Implementation Act of 1988, H.R. 5090, 100th Cong. (1988); S. 2651, 100th Cong. (1988), see 134 CONG. REC. S12,782-852, S12,855-57 (daily ed. Sept. 19, 1988).

[106] Section 151(b)(1) defines "implementing bill." *See supra* p. 60.

[107] Section 151(b)(3) defines "approval resolution." *See supra* p. 72.

[108] For a discussion of "debatable motion or appeal," see *infra* note 111.

[109] This is the same amount of time that section 152(e)(2) provides for consideration of resolutions disapproving certain actions (*see infra* p. 143) and that the Congressional Budget Act allows for consideration of reconciliation bills. *See* Congressional Budget Act of 1974, § 310(e)(2), 2 U.S.C. § 641(e)(2).

[110] Either Leader may at one time yield some or all of the time under that Leader's control to a number of speakers. For example, at the opening of debate on the Dominican Republic-Central America-United States Free Trade Agreement Implementation Act on June 29, 2005, Democratic Leader Reid yielded the time under his control:

> Mr. REID. It is my understanding under the rule there is 10 hours on each side. Is that correct?
>
> The PRESIDING OFFICER. The Senator is correct.
>
> Mr. REID. I yield 5 hours to the ranking member of the Finance Committee, Mr. BAUCUS, and 5 hours to Senator DORGAN.

(continued...)

[110](...continued)

The PRESIDING OFFICER. The Senator has that right.

151 CONG. REC. S7598 (daily ed. June 29, 2005).

Similarly, at the opening of debate on the Uruguay Round Agreements Act on November 30, 1994, Majority Leader Mitchell yielded the time under his control:

> Mr. MITCHELL. Mr. President, and Members of the Senate, under the Senate rules there will now be 20 hours for debate on this agreement. I announced in October that I expect that we will complete 12 hours of debate today and the remainder tomorrow. I hope that any votes which occur with respect to this agreement will occur at the conclusion of those 20 hours of debate or at approximately 6 p.m. tomorrow.
>
> Under the rules, the majority leader has control of 10 hours of time and the minority leader 10 hours of time.
>
> Mr. President, I designate to control the 10 hours of the majority's time Senator Moynihan 5 hours in behalf of proponents of the legislation and Senator Hollings 5 hours in behalf of opponents of the legislation.

140 CONG. REC. S15,077 (daily ed. Nov. 30, 1994).

Similarly, during consideration of the North American Free-trade Agreement Implementation Act on November 18, 1993), Majority Leader Mitchell designated Senator Baucus to control time:

> Mr. MITCHELL. Mr. President, I yield the floor and Senator Baucus will be the manager of this bill and will control the time for the Democratic proponents for this bill or this agreement, I should say, and he is present and will begin the debate now.

139 CONG. REC. S16,005 (daily ed. Nov. 18, 1993).

And, of course, the Senate may by unanimous consent completely supersede the Leaders' allocation of time. For example, before debate had begun on the United States-Singapore Free Trade Agreement Implementation Act, H.R. 2739, 108th Cong. (2003), and the United States-Chile Free Trade Agreement Implementation Act, H.R. 2738, 108th Cong. (2003), the Senate entered into the following unanimous consent agreement:

> Mr. SESSIONS. Mr. President, I ask unanimous consent that at a time to be determined by the majority leader, in concurrence with the Democratic leader, the Senate proceed to the immediate consideration of H.R. 2738 and H.R. 2739 en bloc, with the following conditions for debate only: GRASSLEY, 50 minutes; BAUCUS, 45 minutes; HOLLINGS, 60 minutes; DASCHLE, 30 minutes; JEFFORDS, 60 minutes; SESSIONS, 45 minutes; HATCH, 15 minutes; CORNYN, 15 minutes.
>
> The PRESIDENT pro tempore [Mr. Stevens]. Without objection, it is so ordered.

(continued...)

§ 151(g)(3)

(3) Debate in the Senate on any debatable motion or appeal[111] in connection

[110](...continued)
149 CONG. REC. S10,076 (daily ed. July 28, 2003).

[111] A "debatable motion or appeal" could include an appeal of a ruling of the chair (*see, e.g.*, 139 CONG. REC. S16,352 (daily ed. Nov. 19, 1993)), a motion to waive the Congressional Budget Act (*see, e.g.*, 140 CONG. REC. S15,107 (daily ed. Nov. 30, 1994)), a motion to postpone indefinitely or to a day certain, (*see* Senate Standing Rule XXII <http://rules.senate.gov/senaterules/rule22.htm>), or a motion to suspend the rules. *See* Senate Standing Rule V <http://rules.senate.gov/senaterules/rule5.htm>

A motion to recommit is not in order under section 151(g)(4). *See infra* p. 121. Even though a motion to proceed to a non-privileged measure is generally in order at any time, even during the consideration of a privileged matter (*see* ALAN S. FRUMIN, RIDDICK'S SENATE PROCEDURE 664 (1992) ("While one measure . . . even if privileged . . . is pending before the Senate, a motion to take up a non-privileged measure . . . is in order at any time . . . .") <http://www.gpoaccess.gov/riddick/655-682.pdf>; *see also id.* at 1036 ("a privileged matter may by displaced by a majority vote to proceed to the consideration of a non-privileged matter") <http://www.gpo.gov/congress/senate/riddick/1034-1037.pdf>), in July and August of 2003, the Parliamentarian's office advised that during consideration of an implementing bill, a motion to proceed to a non-privileged matter would not be in order, as it would impose a time limit on what would otherwise be a fully debatable matter, and deprive Senators of their right to filibuster the motion to proceed.

The Congressional Budget Act of 1974, Pub. L. No. 93-344, 88 Stat. 297 (July 12, 1974) (codified as amended at 2 U.S.C. §§ 601-688), applies to implementing bills, and thus Members may raise points of order against implementing bills. Points of order that could lie against implementing bills include exceeding a committee's spending allocation (*see* Congressional Budget Act § 302(f), 2 U.S.C. § 633(f)), making budget process law changes (*see* Congressional Budget Act § 306, 2 U.S.C. § 637), exceeding the budget's aggregate amount of revenue reduction or spending (*see* Congressional Budget Act § 311(a), 2 U.S.C. § 642(a)), or worsening the deficit in violation of the pay-as-you-go rules. *See* Concurrent Resolution on the Budget for Fiscal Year 2004, § 505, H. Con. Res. 95, 108th Cong. (2003).

Points of order under the Congressional Budget Act are generally not debatable; the Chair will permit debate after a point of order is raised under the Congressional Budget Act at the Chair's discretion. *See* 132 CONG. REC. S13,522 (daily ed. Sept. 24, 1986) (point of order under section 302(f)). Once the Chair has ruled on a point of order, it is too late to move to waive the

(continued...)

[111](...continued)
provision on which the point of order was based. *See* 128 CONG. REC. S8884, S8887-88 (1982); Senate Precedent PRL19820722-001 (July 22, 1982) (attempt to waive by Sen. Thurmond during debate on the Tax Reconciliation Act of 1982).

Senators may move to waive Congressional Budget Act and pay-go points of order. *See* Congressional Budget Act § 904(b) & (c); Concurrent Resolution on the Budget for Fiscal Year 2004, § 505(b), H. Con. Res. 95, 108th Cong. (2003). Note that the Senate may waive certain points of order under the Congressional Budget Act and the pay-as-you-go rules only by the affirmative vote of three-fifths of the Members, duly chosen and sworn — that is, 60 Senators, no matter how many are present and voting. *See* Congressional Budget Act § 904(c); Concurrent Resolution on the Budget for Fiscal Year 2004, § 505(b), H. Con. Res. 95, 108th Cong. (2003).

On other legislation, a motion to waive a provision of the Congressional Budget Act is ordinarily fully debatable. *See, e.g.,* 133 CONG. REC. S5381 (1987); Senate Precedent PRL198704123-002 (Apr. 23, 1987) (inquiry of Sen. Harkin); 132 CONG. REC. S16,420 (daily ed. Oct. 16, 1986) (inquiries of Sens. Simpson & Domenici); *id.* at S14,202 (daily ed. Sept. 29, 1986); *id.* at S318 (daily ed. Jan. 27, 1986) (inquiry of Sen. Metzenbaum). But when a Senator makes a motion to waive during the consideration of an implementing bill, debate is limited to one hour, as specified by Trade Act of 1974 section 151(g)(3). *See also* 140 CONG. REC. S15,107 (daily ed. Nov. 30, 1994).

If, on a motion to waive a section of the Congressional Budget Act, a unanimous consent agreement divides time "in the usual form," then the Presiding Officer will divide time on the motion to waive between the maker of the motion to waive and the majority manager of the bill. *See* 138 CONG. REC. S2312 (daily ed. Feb. 26, 1992) (unanimous consent agreement); *id.* at S2457 (daily ed. Feb. 27, 1992) (parliamentary inquiry by Sen. McCain). Consequently, if a Senator other than the majority manager of a bill raises a point of order against an amendment, the Senator raising the point of order must seek time from the majority manager if the Senator wishes to speak in favor of the point of order and against the motion to waive it.

Budget resolutions can accommodate implementing bills and thus clear the way of certain budget points of order. For example, the budget resolution for 1994 created a reserve fund to allow the Budget Committee Chairman to adjust budget constraints to accommodate the North American Free Trade Agreement and other trade-related legislation. *See* Concurrent Resolution Setting Forth the Congressional Budget for the United States Government for the Fiscal Years 1994, 1995, 1996, 1997, and 1998, § 9(g), H. Con. Res. 64, 103d Cong. (1993). Budget Committee Chairman Sasser exercised his authority under that reserve fund to adjust constraints under that budget resolution. *See* 139 CONG. REC. S16259 (daily ed. Nov. 18, 1993) (Statement of Budget Comm. Chairman Sasser).

For examples of budgetary cost analyses of trade legislation, see, for example: for the United States-Singapore Free Trade Agreement Implementation Act, H.R. 2739, 108th Cong. (2003); S. 1417, 108th Cong. (2003); see CONGRESSIONAL BUDGET OFFICE, COST ESTIMATE FOR H.R. 2739, A BILL TO IMPLEMENT THE UNITED STATES-SINGAPORE FREE TRADE AGREEMENT, AS ORDERED REPORTED BY THE HOUSE COMMITTEE ON WAYS AND MEANS ON JULY 17, 2003 (July 21, 2003) <http://www.cbo.gov/showdoc.cfm?index=4444&sequence=0>; CONGRESSIONAL BUDGET OFFICE, COST ESTIMATE FOR H.R. 2739, A BILL TO IMPLEMENT THE UNITED STATES-
(continued...)

with an implementing bill[112] or approval resolution[113] shall be limited to not more than 1 hour, to be equally divided between, and controlled by, the mover and the manager of the bill or resolution, except that in the event the manager of the bill or resolution is in favor of any such motion or appeal, the time in opposition thereto, shall be controlled by the minority leader or his designee.[114]

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[111](...continued)
SINGAPORE FREE TRADE AGREEMENT, AS ORDERED REPORTED BY THE HOUSE COMMITTEE ON THE JUDICIARY ON JULY 17, 2003 (July 21, 2003) <http://www.cbo.gov/showdoc.cfm?index=4443&sequence=0>; CONGRESSIONAL BUDGET OFFICE, COST ESTIMATE FOR S. 1417, A BILL TO IMPLEMENT THE UNITED STATES-SINGAPORE FREE TRADE AGREEMENT, AS ORDERED REPORTED BY THE SENATE COMMITTEE ON FINANCE ON JULY 17, 2003 (July 21, 2003) <http://www.cbo.gov/showdoc.cfm?index=4448&sequence=0>; CONGRESSIONAL BUDGET OFFICE, COST ESTIMATE FOR S. 1417, A BILL TO IMPLEMENT THE UNITED STATES-SINGAPORE FREE TRADE AGREEMENT, AS ORDERED REPORTED BY THE SENATE COMMITTEE ON THE JUDICIARY ON JULY 17, 2003 (July 21, 2003) <http://www.cbo.gov/showdoc.cfm?index=4447&sequence=0>.

For CBO analyses of trade agreements generally, see, for example: CONGRESSIONAL BUDGET OFFICE, THE PROS AND CONS OF PURSUING FREE-TRADE AGREEMENTS (July 31, 2003) <http://www.cbo.gov/showdoc.cfm?index=4458&sequence=0>; CONGRESSIONAL BUDGET OFFICE, THE EFFECTS OF NAFTA ON U.S.-MEXICAN TRADE AND GDP (May 2003) <http://www.cbo.gov/showdoc.cfm?index=4247&sequence=0>; CONGRESSIONAL BUDGET OFFICE, ANTIDUMPING ACTION IN THE UNITED STATES AND AROUND THE WORLD: AN UPDATE (June 2001) <http://www.cbo.gov/showdoc.cfm?index=2895&sequence=0>; CONGRESSIONAL BUDGET OFFICE, CAUSES AND CONSEQUENCES OF THE TRADE DEFICIT: AN OVERVIEW (March 2000) <http://www.cbo.gov/showdoc.cfm?index=1897&sequence=0>; CONGRESSIONAL BUDGET OFFICE, THE DOMESTIC COSTS OF SANCTIONS ON FOREIGN COMMERCE (March 1999) <http://www.cbo.gov/showdoc.cfm?index=1133&sequence=0>.

[112] Section 151(b)(1) defines "implementing bill." *See supra* p. 60.

[113] Section 151(b)(3) defines "approval resolution." *See supra* p. 72.

[114] During debate on the North American Free Trade Agreement Implementation Act on November 19, 1993, in response to parliamentary inquiries by Senator Ted Stevens, the Presiding Officer explained the application of this division of time in connection with an appeal of a ruling of the Chair:

> Mr. STEVENS. Madam President, I appeal the ruling of the Chair.
>
> Mr. MOYNIHAN. I ask for the yeas and nays.
>
> The PRESIDING OFFICER. Under the fast-track debate, there will be 1 hour

(continued...)

[114](...continued)
evenly divided.

Mr. STEVENS. Madam President, it is my understanding that a half-hour will be under my control as the proponent. Is that correct?

The PRESIDING OFFICER. That is correct.

Mr. STEVENS. Will the manager of the bill on the other side [the majority] be in charge of other 30 minutes?

The PRESIDING OFFICER. That is correct.

139 CONG. REC. S16,353 (daily ed. Nov. 19, 1993).

Similarly, during debate of the Uruguay Round Agreements Act on November 30, 1994, the Presiding Officer explained the application of this division of time in connection with a motion to waive the Congressional Budget Act:

Mr. MOYNIHAN. Mr. President, thanking the distinguished President pro tempore [Mr. Byrd] for his thoughtful, gracious remarks as ever, even so, pursuant to section 904 of the Congressional Budget Act of 1974, I move to waive titles III and IV of the Congressional Budget Act, and I further move to waive section 23 of House Concurrent Resolution 218, the concurrent resolution on the budget for fiscal year 1995 as permitted by subsection 3 of that provision.

The PRESIDING OFFICER. Pursuant to title 19 U.S.C. section 2191(g)[(3)], debate on the motion to waive the Budget Act, further consideration of H.R. 5110 is limited to 1 hour to be equally divided and controlled by the Senator who made the motion and the majority manager of the bill. In the event the majority manager supports the motion, the time in opposition to the motion is controlled by the minority leader or his designee.

140 CONG. REC. S15,107 (daily ed. Nov. 30, 1994).

The Senate may dispense with the 1-hour time limit by unanimous consent:

ORDER OF PROCEDURE

Mr. MOYNIHAN. Mr. President, in respect to that specific matter [the 1 hour of debate], since the vote on the budget waiver will not occur until the expiration of the 20 hours of debate [under a previous agreement that votes would occur at the end of debate], and acknowledging that Senators may discuss the waiver at any time and may wish to do so during this debate, I ask unanimous consent that the 1 hour of debate allocated for consideration of the motion . . . to waive be vitiated.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

(continued...)

Such leaders, or either of them, may, from time under their control on the passage of an implementing bill or approval resolution, allot additional time to any Senator during the consideration of any debatable motion or appeal.[115]

[114](...continued)

Mr. MOYNIHAN. I thank the Chair.

140 CONG. REC. S15,107 (daily ed. Nov. 30, 1994). (Chairman Moynihan had moved to waive a point of order threatened by Senator Byrd.)

[115] During debate on the North American Free Trade Agreement Implementation Act on November 19, 1993, in response to parliamentary inquiries from Senators Max Baucus and Ted Stevens, the Presiding Officer clarified the application of this sentence:

Mr. BAUCUS. Madam President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. BAUCUS. Would it be appropriate under the rules and could a Senator ask for unanimous consent to take more time off of the total time for the bill and allocate it to time on this [appeal of the ruling of the chair related to the] amendment? I think there are Senators who wish to speak on this amendment even though that time would be subtracted.

The PRESIDING OFFICER. That is authorized under the statute. The Senator from Montana [Mr. Baucus] should understand it does not take unanimous consent.

Mr. BAUCUS. Might I ask if we reach an agreement where the total time on the amendment by the Senator from Alaska [Mr. Stevens] is not 1 hour but 2 hours?

Mr. STEVENS. Madam President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. STEVENS. Is it not so a Senator who controls time may allocate it any time during consideration of NAFTA? This time we are using now is coming off the NAFTA 20 hours. If the Senator controls any time he may allocate. This Senator controls some time. I am happy to allocate time to anyone who wants to support my position.

The PRESIDING OFFICER. There is 1 hour allocated on the appeal. However, additional time may be added to that from the bill's time.

Mr. STEVENS. Without consent?

The PRESIDING OFFICER. Without consent.

(continued...)

§ 151(g)(4)

(4) A motion in the Senate to further limit debate is not debatable. A motion to recommit[116] an implementing bill[117] or approval resolution[118] is not in order.[119]

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[115](...continued)
139 CONG. REC. S16,358 (daily ed. Nov. 19, 1993).

[116] For a discussion of the motion to recommit in the Senate, see *generally* ALAN S. FRUMIN, RIDDICK'S SENATE PROCEDURE 1106-23 (1992) ("Recommit") <http://www.gpoaccess.gov/riddick/1106-1123.pdf>.

[117] Section 151(b)(1) defines "implementing bill." *See supra* p. 60.

[118] Section 151(b)(3) defines "approval resolution." *See supra* p. 72.

[119] Congressional Research Service Specialist in the Legislative Process Richard Beth has explained how implementing bills come to final action:

> **House-Senate Differences.** Because the implementing bills introduced in each house must be identical and cannot be amended, the implementing bills initially passed by each chamber must be identical. As a result, no occasion can arise for resolving such differences, either through a House-Senate conference or through motions to concur in the position of the other house. Otherwise, either of these proceedings might become a means for introducing additional changes into the legislation.
>
> . . . .
>
> **Final Action.** A bill passed by either chamber is routinely transmitted to the other for its action. The statute directs that after either chamber so receives an implementing bill, the final vote in that chamber shall be on the measure from the other. This requirement ensures that both chambers can pass the same one of the two identical measures, so that one can be presented to the President.
>
> The function of preventing inaction is also shared by the prohibition on amendment. If it were possible for the House and Senate versions of an implementing bill to differ, it would be most difficult to ensure that Congress, by conference committee or otherwise, could reach agreement on a final version acceptable to both houses. Neither mandatory time limits nor any other mechanism can force negotiators to come into agreement.
>
> Unlike some expedited procedures, that for trade agreements contains no special provisions for overriding a veto. The President would not likely veto a measure whose exact terms he had submitted to Congress. Also, the Constitution specifies that the house receiving a veto message must take it up, though by precedent, it may refer the message to committee or lay it aside rather than vote directly on whether to override.
>
> Some expedited procedures provide that if Congress adjourns *sine die* before

(continued...)

[119](...continued)
statutory time limits expire, the time periods provided begin anew upon the reconvening of Congress or resubmission of the proposal. The expedited procedures for trade agreements lack a provision of this kind.

RICHARD S. BETH, TRADE AGREEMENT IMPLEMENTATION: EXPEDITED PROCEDURES & CONGRESSIONAL CONTROL IN EXISTING LAW 9-10 (Nov. 26, 2001) (Cong. Res. Serv. no. RL31192) (footnotes omitted) <http://www.congress.gov/erp/rl/pdf/RL31192.pdf>.

§ 152

SEC. 152.[120] RESOLUTIONS DISAPPROVING CERTAIN ACTIONS

§ 152(a)

(a) CONTENTS OF RESOLUTIONS.[121] —

[120] Section 152 is codified as amended at 19 U.S.C. § 2192.

[121] The Joint statement of managers accompanying the conference report on the Trade Act of 1974 includes the following discussion of the resolutions contemplated by this section:

> Amendments Nos. 159, 160, 161, and 162: Section 151 of the bill as passed by the House contained a procedure for congressional disapproval with respect to nontariff barrier trade agreements submitted to Congress, to escape clause actions to retaliation against unfair trade practices, and to extension or continuation of nondiscriminatory tariff treatment. Under this procedure, the President was to transmit a proclamation or agreement to the Congress, after 7 days it was in order to discharge the committee to which a resolution of disapproval had been referred, and, if either House approved the resolution of disapproval within a 90-day period, the agreement or proclamation was not to take effect.
>
> The Senate amendments strike out section 151 of the House bill and insert new sections 151, 152, and 153. Under these amendments, a congressional approval procedure applies to all nontariff barrier trade agreements, to agreements establishing certain principles in international trade (including GATT revisions) which change federal law (including a material change in an administrative rule), and to bilateral trade agreements with nonmarket countries entered into after the date of the enactment of the bill. . . .
>
> Under the Senate amendments, provision is also made for two-House disapproval for Presidential import relief which differs from the Commission's recommendation, and for Presidential retaliation on an MFN [most-favored nation] basis against unjustifiable or unreasonable restrictions. Under these procedures, if both Houses do not adopt a concurrent resolution within the applicable time period, the Presidential action enters into force.
>
> Finally, under the Senate amendments, a one-House disapproval procedure is established (1) for the determination of the Secretary of the Treasury not to apply countervailing duties during a 2-year discretionary period, (2) for extension of benefits under bilateral trade agreements with nonmarket countries entered into before the date of the enactment of the bill, (3) to all annual reviews of MFN treatment and government credits and guarantees to countries receiving benefits negotiated under title IV of the bill, and (4) to U.S. Government credits and investment guarantees extended after the date of the enactment of the bill. This one-House disapproval procedure is the same as the two-House procedure provided by the Senate amendments except that adoption by majority vote of those present and voting in *either* House is sufficient to prevent action. The House recedes with clarifying and conforming amendments.

(continued...)

[121](...continued)
H.R. REP. NO. 93-1644, as 32-33 (1974).

The Senate Finance Committee report on what would become the Trade Act of 1974 states with regard to these resolutions of disapproval:

RESOLUTIONS DISAPPROVING CERTAIN ACTIONS

(Section 152)

Two-House Veto: Just as the Committee believes it is important to assure a vote on the merits of any bill implementing a nontariff barrier agreement or a resolution of approval with respect to a commercial agreement entered into under Title IV of this bill, so the Committee believes it is important to assure that procedures are developed to guarantee effective Congressional oversight of matters in other areas of trade policy. Accordingly, the Committee has provided in a number of instances for Congressional disapproval of certain Executive actions. For example, where the President imposes import relief actions under Title II and market disruption actions under Title IV different from the action recommended by the International Trade Commission, the Congress may disapprove of the relief selected by the President and direct him, instead, to impose the relief recommended by the Commission. In connection with the authority under section 301 of the bill to take retaliatory action against unfair foreign trade practices, the Congress may restrict the application of retaliatory action to the country or countries imposing the unjustifiable or unreasonable trade practices in cases where the President has chosen to retaliate on an MFN basis. In each of these cases, a Congressional override would be provided for by concurrent resolution. The Committee feels that since such actions would result in the imposition of affirmative action on a basis other than that proposed by the President (i.e., the imposition of relief recommended by the Tariff Commission or retaliatory action on a selective basis), it is appropriate to require that a disapproval resolution be adopted by an affirmative vote by the majority of members present and voting in both Houses of Congress.

One-House Veto: However, Congressional actions disapproving the suspension of the imposition of countervailing duties or the entering into force (with respect to the Soviet-American agreement of 1972) or continuing of nondiscriminatory treatment with respect to the products of a Communist country would not require additional affirmative action upon the President (or the Secretary of the Treasury). Disapproval of the Secretary of the Treasury's suspension of the imposition of countervailing duties would result in the imposition of those countervailing duty orders already issued by the Secretary; and disapproval of the granting or continuance of nondiscriminatory treatment would require no action on the part of the Executive. In either case, therefore, the Committee believes it appropriate to provide for disapproval by vote of either House.

S. REP. NO. 93-1298, at 110 (1974).

The House Ways and Means Committee report on what would become the Trade Act of 1974 states with regard to the precursors to these disapproval resolutions:

(continued...)

[121](...continued)

In developing the procedures for congressional consideration of trade agreements respecting nontariff barriers, the committee determined that in a number of other instances authorities granted to the President might also be subject to the same procedures for possible disapproval. Thus, in addition to the procedures for disapproving nontariff barrier agreements, the bill provides that such procedures will be used with respect to: (*a*) actions the President might take with respect to import quotas and orderly marketing agreements under section 203, (*b*) actions the President might take with respect to unfair trade practices under section 301 and, (c) findings the President might make and actions the President might take with respect to the extension of or continuation of nondiscriminatory treatment to the products of certain state trading countries.

The bill, therefore, provides for the consideration of resolutions disapproving the entering into trade agreements on distortions of trade or disapproving certain other actions as discussed above. . . .

. . . .

If, at the end of 90 days after the date which a document referred to in sections 102(f), 204(b), 302(b), or 406(a) or (b) has been transmitted to the Congress, neither House has acted favorably on a motion to disapprove of the action proposed to be taken by the President, such action will become effective.

. . . .

CHAPTER 5 — CONGRESSIONAL DISAPPROVAL PROCEDURES WITH RESPECT TO PRESIDENTIAL ACTIONS

Section 151. Resolutions disapproving the entering into force of trade agreements on distortions of trade or disapproving certain other actions

. . . .

Section 151(b)(1) provides that for purposes of section 151, the term "resolution" means only a resolution of either House of Congress, the matter after the resolving clause of which is as follows: "That the _____ does not favor _____ transmitted to Congress by the President on _____", the first blank space being filled with the name of the resolving House and the third blank space being appropriately filled with the day and year.

Section 151(b)(2) provides that the second blank space referred to in section 151(b)(1) shall be filled as follows:

(1) in the case of a resolution relating to the entering into force of a trade agreement under section 102(f) of the bill, with the phrase "the entering into force of the trade agreement";

(continued...)

§ 152(a)(1) **(1) For purposes of this section, the term "resolution" means only —**

§ 152(a)(1)(A) **(A) a joint resolution[122] of the two Houses of the Congress, the matter after the resolving clause of which is as follows: "That the Congress does not approve the action taken by, or the determination**

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[121](...continued)

(2) in the case of a resolution referred to in section 204(b) of the bill, with the phrase "the taking effect or the continuation in effect of the proposed action under paragraph (3) or (4) of section 203(b) of the Trade Reform Act of 1973";

(3) in the case of a resolution referred to in section 302(b) of the bill, with the phrase "the taking effect or the continuation in effect of action under section 301 of the Trade Reform Act of 1973"; and

(4) in the case of a resolution referred to in section 406(c) of the bill, with the phrase "the entering into force or the continuing in effect of nondiscriminatory treatment with respect to the products of _____" (with this blank space being filled by the name of the appropriate country).

H.R. REP. NO. 93-571, at 42, 108-09 (1973).

[122] "Joint resolution" means:

A legislative measure that Congress usually uses for purposes other than general legislation. Like a bill, it has the force of law when passed by both houses and either approved by the president or passed over the president's veto. Unlike a bill, a joint resolution enacted into law is not called an act; it retains its original title.

Most often, joint resolutions deal with such relatively limited matters, such as the correction of errors in existing law, continuing appropriations, a single appropriation, or the establishment of permanent joint committees. Unlike bills, however, joint resolutions also are used to propose constitutional amendments; these do not require the president's signature and become effective only when ratified by three-fourths of the states. While a preamble is not considered appropriate in a bill, it may be included in a joint resolution to set forth the events or facts that prompted the measure, for example, a declaration of war.

The House designates joint resolutions as H.J. Res., the Senate as S.J. Res. Each house numbers its joint resolutions consecutively in the order of introduction during a two-year Congress.

CONGRESSIONAL QUARTERLY, AMERICAN CONGRESSIONAL DICTIONARY.

of, the President under section 203[123]

[123] Section 203 is codified as amended at 19 U.S.C. § 2253, and states:

SEC. 203. ACTION BY PRESIDENT AFTER DETERMINATION OF IMPORT INJURY

(a) IN GENERAL. —

(1) (A) After receiving a report under section 202(f) [19 U.S.C. § 2252(f)] containing an affirmative finding regarding serious injury, or the threat thereof, to a domestic industry, the President shall take all appropriate and feasible action within his power which the President determines will facilitate efforts by the domestic industry to make a positive adjustment to import competition and provide greater economic and social benefits than costs.

(B) The action taken by the President under subparagraph (A) shall be to such extent, and for such duration, subject to subsection (e)(1), that the President determines to be appropriate and feasible under such subparagraph.

(C) The interagency trade organization established under section 242(a) of the Trade Expansion Act of 1962 [19 U.S.C. § 1872(a)] shall, with respect to each affirmative determination reported under section 202(f) [19 U.S.C. § 2252(f)], make a recommendation to the President as to what action the President should take under subparagraph (A).

(2) In determining what action to take under paragraph (1), the President shall take into account —

(A) the recommendation and report of the Commission;

(B) the extent to which workers and firms in the domestic industry are —

(i) benefitting from adjustment assistance and other manpower programs, and

(ii) engaged in worker retraining efforts;

(C) the efforts being made, or to be implemented, by the domestic industry (including the efforts included in any adjustment plan or commitment submitted to the Commission under section 202(a) [19 U.S.C. § 2252(a)]) to make a positive adjustment to import competition;

(D) the probable effectiveness of the actions authorized under paragraph (3) to facilitate positive adjustment to import competition;

(E) the short- and long-term economic and social costs of the actions authorized under paragraph (3) relative to their short- and long-term economic and social benefits and other considerations relative to the position of the domestic industry in the United States economy;

(continued...)

[123](...continued)

(F) other factors related to the national economic interest of the United States, including, but not limited to —

(i) the economic and social costs which would be incurred by taxpayers, communities, and workers if import relief were not provided under this chapter [19 U.S.C. §§ 2251 et seq.],

(ii) the effect of the implementation of actions under this section on consumers and on competition in domestic markets for articles, and

(iii) the impact on United States industries and firms as a result of international obligations regarding compensation;

(G) the extent to which there is diversion of foreign exports to the United States market by reason of foreign restraints;

(H) the potential for circumvention of any action taken under this section;

(I) the national security interests of the United States; and

(J) the factors required to be considered by the Commission under section 202(e)(5) [19 U.S.C. § 2252(e)(5)].

(3) The President may, for purposes of taking action under paragraph (1) —

(A) proclaim an increase in, or the imposition of, any duty on the imported article;

(B) proclaim a tariff-rate quota on the article;

(C) proclaim a modification or imposition of any quantitative restriction on the importation of the article into the United States;

(D) implement one or more appropriate adjustment measures, including the provision of trade adjustment assistance under chapter 2 [19 U.S.C. §§ 2271 et seq.],

(E) negotiate, conclude, and carry out agreements with foreign countries limiting the export from foreign countries and the import into the United States of such article;

(F) proclaim procedures necessary to allocate among importers by the auction of import licenses quantities of the article that are permitted to be imported into the United States;

(G) initiate international negotiations to address the underlying cause of the increase in imports of the article or otherwise to alleviate the injury or

(continued...)

[123](...continued)
threat thereof;

(H) submit to Congress legislative proposals to facilitate the efforts of the domestic industry to make a positive adjustment to import competition;

(I) take any other action which may be taken by the President under the authority of law and which the President considers appropriate and feasible for purposes of paragraph (1); and

(J) take any combination of actions listed in subparagraphs (A) through (I).

(4) (A) Subject to subparagraph (B), the President shall take action under paragraph (1) within 60 days (50 days if the President has proclaimed provisional relief under section 202(d)(2)(D) [19 U.S.C. § 2252(d)(2)(D)] with respect to the article concerned) after receiving a report from the Commission containing an affirmative determination under section 202(b)(1) [19 U.S.C. § 2252(b)(1)] (or a determination under such section which he considers to be an affirmative determination by reason of section 330(d) of the Tariff Act of 1930 [19 U.S.C. § 1330(d)]).

(B) If a supplemental report is requested under paragraph (5), the President shall take action under paragraph (1) within 30 days after the supplemental report is received, except that, in a case in which the President has proclaimed provisional relief under section 202(d)(2)(D) [19 U.S.C. § 2252(d)(2)(D)] with respect to the article concerned, action by the President under paragraph (1) may not be taken later than the 200th day after the provisional relief was proclaimed.

(5) The President may, within 15 days after the date on which he receives a report from the Commission containing an affirmative determination under section 202(b)(1) [19 U.S.C. § 2252(b)(1)], request additional information from the Commission. The Commission shall, as soon as practicable but in no event more than 30 days after the date on which it receives the President's request, furnish additional information with respect to the industry in a supplemental report.

(b) REPORTS TO CONGRESS. —

(1) On the day the President takes action under subsection (a)(1), the President shall transmit to Congress a document describing the action and the reasons for taking the action. If the action taken by the President differs from the action required to be recommended by the Commission under section 202(e)(1) [19 U.S.C. § 2252(e)(1)], the President shall state in detail the reasons for the difference.

(2) On the day on which the President decides that there is no appropriate and feasible action to take under subsection (a)(1) with respect to a domestic industry, the President shall transmit to Congress a document that sets forth in detail the reasons for the decision.

(continued...)

[123](...continued)

(3) On the day on which the President takes any action under subsection (a)(1) that is not reported under paragraph (1), the President shall transmit to Congress a document setting forth the action being taken and the reasons therefor.

(c) IMPLEMENTATION OF ACTION RECOMMENDED BY COMMISSION. — If the President reports under subsection (b)(1) or (2) that —

(1) the action taken under subsection (a)(1) differs from the action recommended by the Commission under section 202(e)(1) [19 U.S.C. § 2252(e)(1)]; or

(2) no action will be taken under subsection (a)(1) with respect to the domestic industry;

the action recommended by the Commission shall take effect (as provided in subsection (d)(2)) upon the enactment of a joint resolution described in section 152(a)(1)(A) [19 U.S.C. § 2192(a)(1)(A)] within the 90-day period beginning on the date on which the document referred to in subsection (b)(1) or (2) is transmitted to the Congress.

(d) TIME FOR TAKING EFFECT OF CERTAIN RELIEF. —

(1) Except as provided in paragraph (2), any action described in subsection (a)(3)(A), (B), or (C), that is taken under subsection (a)(1) shall take effect within 15 days after the day on which the President proclaims the action, unless the President announces, on the date he decides to take such action, his intention to negotiate one or more agreements described in subsection (a)(3)(E) in which case the action under subsection (a)(3)(A), (B), or (C) shall be proclaimed and take effect within 90 days after the date of such decision.

(2) If the contingency set forth in subsection (c) occurs, the President shall, within 30 days after the date of the enactment of the joint resolution referred to in such subsection, proclaim the action recommended by the Commission under section 202(e)(1) [19 U.S.C. § 2252(e)(1)].

(e) LIMITATIONS ON ACTIONS. —

(1) (A) Subject to subparagraph (B), the duration of the period in which an action taken under this section may be in effect shall not exceed 4 years. Such period shall include the period, if any, in which provisional relief under section 202(d) [19 U.S.C. § 2252(d)] was in effect.

(B) (i) Subject to clause (ii), the President, after receiving an affirmative determination from the Commission under section 204(c) [19 U.S.C. § 2252(c)] (or, if the Commission is equally divided in its determination, a determination which the President considers to be an affirmative determination of the Commission), may extend the effective period of any action under this section if the President determines that —

(continued...)

[123](...continued)

(I) the action continues to be necessary to prevent or remedy the serious injury; and

(II) there is evidence that the domestic industry is making a positive adjustment to import competition.

(ii) The effective period of any action under this section, including any extensions thereof, may not, in the aggregate, exceed 8 years.

(2) Action of a type described in subsection (a)(3)(A), (B), or (C) may be taken under subsection (a)(1), under section 202(d)(1)(G) [19 U.S.C. § 2252(d)(1)(G)], or under section 202(d)(2)(D) [19 U.S.C. § 2252(d)(2)(D)] only to the extent the cumulative impact of such action does not exceed the amount necessary to prevent or remedy the serious injury.

(3) No action may be taken under this section which would increase a rate of duty to (or impose a rate) which is more than 50 percent ad valorem above the rate (if any) existing at the time the action is taken.

(4) Any action taken under this section proclaiming a quantitative restriction shall permit the importation of a quantity or value of the article which is not less than the average quantity or value of such article entered into the United States in the most recent 3 years that are representative of imports of such article and for which data are available, unless the President finds that the importation of a different quantity or value is clearly justified in order to prevent or remedy the serious injury.

(5) An action described in subsection (a)(3)(A), (B), or (C) that has an effective period of more than 1 year shall be phased down at regular intervals during the period in which the action is in effect.

(6) (A) The suspension, pursuant to any action taken under this section, of—

(i) subheadings 9802.00.60 or 9802.00.80 of the Harmonized Tariff Schedule of the United States with respect to an article; and

(ii) the designation of any article as an eligible article for purposes of title V;

shall be treated as an increase in duty.

(B) No proclamation providing for a suspension referred to in subparagraph (A) with respect to any article may be made by the President, nor may any such suspension be recommended by the Commission under section 202(e) [19 U.S.C. § 2252(e)], unless the Commission, in addition to making an affirmative determination under section 202(b)(1) [19 U.S.C. § 2252(b)(1)], determines in the course of its investigation under section 202(b) [19 U.S.C. § 2252(b)] that the

(continued...)

[123](...continued)

serious injury, or threat thereof, substantially caused by imports to the domestic industry producing a like or directly competitive article results from, as the case may be —

(i) the application of subheading 9802.00.60 or subheading 9802.00.80 of the Harmonized Tariff Schedule of the United States; or

(ii) the designation of the article as an eligible article for the purposes of title V.

(7) (A) If an article was the subject of an action under subparagraph (A), (B), (C), or (E) of subsection (a)(3), no new action may be taken under any of those subparagraphs with respect to such article for —

(i) a period beginning on the date on which the previous action terminates that is equal to the period in which the previous action was in effect, or

(ii) a period of 2 years beginning on the date on which the previous action terminates,

whichever is greater.

(B) Notwithstanding subparagraph (A), if the previous action under subparagraph (A), (B), (C), or (E) of subsection (a)(3) with respect to an article was in effect for a period of 180 days or less, the President may take a new action under any of those subparagraphs with respect to such article if —

(i) at least 1 year has elapsed since the previous action went into effect; and

(ii) an action described in any of those subparagraphs has not been taken with respect to such article more than twice in the 5-year period immediately preceding the date on which the new action with respect to such article first becomes effective.

(f) CERTAIN AGREEMENTS. —

(1) If the President takes action under this section other than the implementation of agreements of the type described in subsection (a)(3)(E), the President may, after such action takes effect, negotiate agreements of the type described in subsection (a)(3)(E), and may, after such agreements take effect, suspend or terminate, in whole or in part, any action previously taken.

(2) If an agreement implemented under subsection (a)(3)(E) is not effective, the President may, consistent with the limitations contained in subsection (e), take additional action under subsection (a).

(continued...)

of the Trade Act of 1974 transmitted to the Congress on _____.", the blank space being filled with the appropriate date; and

§ 152(a)(1)(B) **(B) a joint resolution of the two Houses of Congress, the matter after the resolving clause of which is as follows: "That the Congress does not approve _____ transmitted to the Congress on _____", with the first blank space being filled in accordance with paragraph (2),[124] and the second blank space being filled with the appropriate date.[125]**

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[123](...continued)

(g) REGULATIONS. —

(1) The President shall by regulation provide for the efficient and fair administration of all actions taken for the purpose of providing import relief under this chapter [19 U.S.C. §§ 2251 et seq.].

(2) In order to carry out an international agreement concluded under this chapter [19 U.S.C. §§ 2251 et seq.], the President may prescribe regulations governing the entry or withdrawal from warehouse of articles covered by such agreement. In addition, in order to carry out any agreement of the type described in subsection (a)(3)(E) that is concluded under this chapter [19 U.S.C. §§ 2251 et seq.] with one or more countries accounting for a major part of United States imports of the article covered by such agreement, including imports into a major geographic area of the United States, the President may issue regulations governing the entry or withdrawal from warehouse of like articles which are the product of countries not parties to such agreement.

(3) Regulations prescribed under this subsection shall, to the extent practicable and consistent with efficient and fair administration, insure [ensure] against inequitable sharing of imports by a relatively small number of the larger importers.

19 U.S.C. § 2253.

[124] *See infra* p. 135.

[125] The Customs and Trade Act of 1990, Pub. L. No. 101-382, § 132(c)(2), 104 Stat. 629, 646 (Aug. 20, 1990), changed subparagraph (B) to require a joint resolution, instead of a simple resolution of either House of Congress. Prior to that change, subparagraph (B) read:

(B) a resolution of either House of the Congress, the matter after the resolving clause of which is as follows: "That the _____ does not approve _____

(continued...)

[125](...continued)
transmitted to the Congress on _____", with the first blank space being filled with the name of the resolving House, the second blank space being filled in accordance with paragraph (2), and the third blank space being filled with the appropriate date.

Trade Act of 1974, Pub. L. No. 93-618, § 152(a)(1)(B), 88 Stat. 1978, 2004 (amended 1990).

The Senate Finance Committee report on the bill that would become the Customs and Trade Act of 1990 explained:

TITLE IV. MISCELLANEOUS PROVISIONS

Section 4001. Technical amendments regarding nondiscriminatory trade treatment

Legislative vetoes were declared unconstitutional by the Supreme Court in *Immigration and Naturalization Service* v. *Chadha* [462 U.S. 919 (1983)] in 1983. In three instances, the Trade Act of 1974 creates procedures that might be viewed as "legislative vetoes."

While the Committee does not necessarily agree these provisions are unconstitutional, it proposes to make their constitutionality undebatable, in order to preserve the 1974 statutory scheme as the United States enters an era of rapidly changing relations with nations in Eastern Europe and the Soviet Union.

Title IV of the Trade Act of 1974 sets out special rules for countries that did not receive "nondiscriminatory" trade treatment, that is, MFN [most-favored nation] treatment, as of the date of the enactment of that law, January 3, 1975. These countries are currently the Soviet Union and certain other nonmarket economy (NME) countries. This title of the bill is intended to remove the possibility procedures in Title IV might be unconstitutional, without changing the underlying scheme of the law. The three instances are as follows:

. . . .

(2) The Jackson-Vanik amendment, section 402 of the Trade Act of 1974, prohibits MFN for NME countries unless they meet certain standards relating to freedom of emigration, but the President is authorized to waive these conditions under certain circumstances. However, if his wavier is disapproved by either House of Congress within 60 days after he makes the waiver, then his waiver authority with respect to the country concerned is invalid.

Since the one-house resolution of disapproval under this procedure would not be submitted to the President, it is considered likely (by the American Law Division of the Congressional Research Service among others) that this procedure is unconstitutional under the *Chadha* decision. The defect is cured, again, by a provision of the bill amending the law to make the resolution of disapproval a joint resolution. Since the resolution of disapproval would, unlike the existing law, be subject to Presidential veto and the Congress overriding the veto, the Committee bill allows 45 days in addition to

(continued...)

§ 152(a)(2)

(2) The first blank space referred to in paragraph (1)(B)[126] shall be filled, in the case of a resolution referred to in section 407(c)(2),[127] with the phrase "the report of the President

[125](...continued)
the time allowed under current law for this process to be completed.

(3) Under section 407 of the Trade Act of 1974, either House has the power to prevent MFN for a NME country, even if the President finds the country in compliance with the Jackson-Vanik amendment, by passing a resolution of disapproval within 90 days after the President makes his finding. Like the one-house disapproval of waivers, this procedure is likely unconstitutional, and the defect is cured by a provision of the bill providing for the use of a joint resolution.

S. Rep. No. 101-252, at 51-52 (1990).

[126] *See supra* p. 133.

[127] Section 407(c)(2) is codified as amended at 19 U.S.C. § 2437(c)(2), and states:

(c) EFFECTIVE DATE OF PROCLAMATIONS AND AGREEMENTS; DISAPPROVAL OF REPORTS. —

. . . .

(2) In the case of a document referred to in subsection (b) which contains a report submitted by the President under section 402(b) or 409(b) [19 U.S.C. §§ 2432(b) or 2439(b)] with respect to a nonmarket economy country, if, before the close of the 90-day period beginning on the day on which such document is delivered to the House of Representatives and to the Senate, a joint resolution described in section 152(a)(1)(B) is enacted into law that disapproves of the report submitted by the President with respect to such country, then, beginning with the day after the end of the 60-day period beginning with the date of the enactment of such resolution of disapproval, (A) nondiscriminatory treatment shall not be in force with respect to the products of such country, and the products of such country shall be dutiable at the rates set forth in rate column numbered 2 of the Harmonized Tariff Schedule of the United States, (B) such country may not participate in any program of the Government of the United States which extends credit or credit guarantees or investment guarantees, and (C) no commercial agreement may thereafter be concluded with such country under this title [19 U.S.C. §§ 2431 et seq.]. If the President vetoes the joint resolution, the joint resolution shall be treated as enacted into law before the end of the 90-day period under this paragraph if both Houses of Congress vote to override such veto on or before the later of the last day of such 90-day period or the last day of the 15-day period (excluding any day described in section 154(b)) beginning on the date the Congress receives the veto message from the President.

(continued...)

submitted under section _____ of the Trade Act of 1974 with respect to _____" (with the first blank space being filled with "402(b)"[128] or "409(b)",[129] as appropriate, and the second

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[127](...continued)
19 U.S.C. § 2437(c)(2).

[128] Section 402(b) of the Trade Act of 1974, commonly referred to as the "Jackson-Vanik amendment," is codified as amended at 19 U.S.C. § 2432(b), and states:

> (b) PRESIDENTIAL DETERMINATION AND REPORT TO CONGRESS THAT NATION IS NOT VIOLATING FREEDOM OF EMIGRATION. — After the date of the enactment of this Act [Jan. 3, 1975],
>
> > (A) products of a nonmarket economy country may be eligible to receive nondiscriminatory treatment (normal trade relations),
> >
> > (B) such country may participate in any program of the Government of the United States which extends credits or credit guarantees or investment guarantees, and
> >
> > (C) the President may conclude a commercial agreement with such country, only after the President has submitted to the Congress a report indicating that such country is not in violation of paragraph (1), (2), or (3) of subsection (a).
>
> Such report with respect to such country shall include information as to the nature and implementation of emigration laws and policies and restrictions or discrimination applied to or against persons wishing to emigrate. The report required by this subsection shall be submitted initially as provided herein and, with current information, on or before each June 30 and December 31 thereafter so long as such treatment is received, such credits or guarantees are extended, or such agreement is in effect.

19 U.S.C. § 2432(b).

[129] Section 409(b) is codified as amended at 19 U.S.C. § 2439(b), and states:

> (b) REPORT TO CONGRESS CONCERNING EMIGRATION POLICIES. — After the date of the enactment of this Act [Jan. 3, 1975],
>
> > (A) a nonmarket economy country may participate in any program of the Government of the United States which extends credits or credit guarantees or investment guarantees, and
> >
> > (B) the President may conclude a commercial agreement with such country, only after the President has submitted to the Congress a report indicating that such country is not in violation of paragraph (1), (2), or (3) of subsection (a).

(continued...)

blank space being filled with the name of the country involved).

§ 152(b) **(b) REFERENCE TO COMMITTEES.[130] — All resolutions[131] introduced in the House of Representatives shall be referred to the Committee on Ways and Means and all resolutions introduced in the Senate shall be referred to the Committee on Finance.**

§ 152(c) **(c) DISCHARGE OF COMMITTEES.[132] —**

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[129](...continued)
Such report with respect to such country shall include information as to the nature and implementation of its laws and policies and restrictions or discrimination applied to or against persons wishing to emigrate to the United States to join close relatives. The report required by this subsection shall be submitted initially as provided herein and, with current information, on or before each June 30 and December 31 thereafter, so long as such credits or guarantees are extended or such agreement is in effect.

19 U.S.C. § 2439(b).

[130] Section 9(c)(2)(B) of the Burmese Freedom and Democracy Act of 2003, Pub. L. No. 108-61, 117 Stat. 864, 869 (July 28, 2003), applies this subsection to a renewal resolution under that Act as if that resolution were a resolution described in section 152(a) of the Trade Act of 1974, *supra* p. 123. Thus the Presiding Officer referred to the Committee on Finance the following joint resolutions approving the renewal of import restrictions contained in the Burmese Freedom and Democracy Act of 2003: S.J. Res. 36, 108th Cong. (2004), 150 CONG. REC. S4702 (daily ed. Apr. 29, 2004); S.J. Res. 39, 108th Cong. (2004), 150 CONG. REC. S6501 (daily ed. June 7, 2004); S.J. Res. 18, 109th Cong. (2005), 151 CONG. REC. S4877 (daily ed. May 10, 2005); S.J. Res. 38, 109th Cong. (2006), 152 CONG. REC. S5390-91 (daily ed. May 26, 2006) . And the following joint resolutions approving the renewal of import restrictions contained in the Burmese Freedom and Democracy Act of 2003 were referred to the Committee on Ways and Means: on April 29, 2004, H.J. Res. 95, 108th Cong. (2004); on June 3, 2004, H.J. Res. 97, 108th Cong. (2004); on May 26, 2005, H.J. Res. 52, 109th Cong. (2005); on May 19, 2006, H.J. Res. 86, 109th Cong. (2006).

[131] For purposes of this section, section 152(a)(1) defines the term "resolution." *See supra* p. 126.

[132] Section 9(c)(2)(B) of the Burmese Freedom and Democracy Act of 2003, Pub. L. No. 108-61, 117 Stat. 864, 869 (July 28, 2003), applies this subsection to a renewal resolution under that Act as if that resolution were a resolution described in section 152(a) of the Trade Act of 1974, *supra* p. 123.

§ 152(c)(1)

(1) If the committee of either House to which a resolution[133] has been referred has not reported it at the end of 30 days after its introduction, not counting any day which is excluded under section 154(b),[134] it is in order to move either to discharge the committee from further consideration of the resolution or to discharge the committee from further consideration of any other resolution introduced with respect to the same matter,[135] except that a motion to discharge —

§ 152(c)(1)(A)

(A) may only be made on the second legislative day after the calendar day on which the Member making the motion announced to the House his intention to do so; and

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[133] For purposes of this section, section 152(a)(1) defines the term "resolution." *See supra* p. 126.

[134] Section 154(b) excludes:

> (1) the days on which either House is not in session because of an adjournment of more than 3 days to a day certain or an adjournment of the Congress sine die, and
>
> (2) any Saturday and Sunday, not excluded under paragraph (1), when either House is not in session.

See infra p. 160.

[135] The Senate Finance Committee report on what would become the Trade Act of 1974 states with regard to discharging resolutions of disapproval:

> *Procedural Rules:* Because the issues involved will be narrower than those involved in the approval of nontariff barrier agreements under the procedures of section 151, the Committee believes it appropriate to afford the committees of Congress (the House Committee on Ways and Means and the Senate Committee on Finance) to which a disapproval resolution has been referred 30 days to report on such resolution. Upon failure to report on a resolution within such time, the committee or committees considering it could be discharged from further consideration upon adoption of a motion to discharge. Such motion could be made only by an individual favoring the resolution, would be "highly privileged" in the House, and "privileged" in the Senate; and debate thereon would be limited to one hour. Amendments on any such motion to discharge would not be in order, and it would not be in order to reconsider the vote by which any such motion is agreed or disagreed to.

S. REP. NO. 93-1298, at 110-11 (1974).

§ 152(c)(1)(B) **(B) is not in order after the Committee has reported a resolution[136] with respect to the same matter.**

§ 152(c)(2) **(2) A motion to discharge under paragraph (1)[137] may be made only by an individual favoring the resolution,[138] and is highly privileged in the House and privileged in the Senate;[139] and debate thereon**

[136] For purposes of this section, section 152(a)(1) defines the term "resolution." *See supra* p. 126.

[137] *See supra* p. 138.

[138] For purposes of this section, section 152(a)(1) defines the term "resolution." *See supra* p. 126.

[139] The consequences of privilege include:

> When a privileged matter is pending before the Senate for disposition, it is subject to any of the motions specified in Rule XXII.
>
> Privileged business . . . do not have to lie over a day before consideration.
>
> . . . .
>
> The consideration of privileged business or privileged matters . . . does not displace the unfinished business or pending business, but merely suspends its consideration until the privileged business is disposed of.
>
> . . . .
>
> A privileged matter under consideration in the Senate may be displaced by another privileged matter by a majority vote . . . . A motion to proceed to the consideration of a bill is not displaced by . . . the transaction of privileged business or business transacted by unanimous consent.

ALAN S. FRUMIN, RIDDICK'S SENATE PROCEDURE 1035-36 (1992) ("Privileged Business") <http://www.gpoaccess.gov/riddick/1034-1037.pdf>.

During the consideration of one privileged matter (for example, an S. numbered bill), the Senate's adoption of a motion to proceed to a second privileged matter (for example, an H.R. numbered bill), places the first matter (here, the S. bill) on the Calendar. *Cf.* 127 CONG. REC.

(continued...)

shall be limited to not more than 1 hour, the time to be divided in the House equally between those favoring and those opposing the resolution, and to be divided in the Senate equally between, and controlled by, the majority leader and the minority leader or their designees. An amendment to the motion is not in order,[140] and it is not in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

§ 152(d) **(d) FLOOR CONSIDERATION IN THE HOUSE.[141] —**

§ 152(d)(1) **(1) A motion in the House of Representatives to proceed to**

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[139](...continued)
S4871 (1981); Senate Precedent PRL19810512-001 (May 12, 1981) (response of the Chair to motion by Majority Leader Baker with regard to budget resolutions). In contrast, if the Senate agrees by unanimous consent to take up the second privileged matter, the result is different, leaving the first privileged matter pending at the end of consideration of the second privileged matter. *Compare* ALAN S. FRUMIN, RIDDICK'S SENATE PROCEDURE 664-65 (1992) (displacement by motion) <http://www.gpoaccess.gov/riddick/655-682.pdf>, *with id.* at 669 (displacement by unanimous consent).

[140] Section 151(d) sets forth a parallel prohibition of amendments to an implementing bill or approval resolution. *See supra* p. 81 and note 57.

[141] The Senate Finance Committee report on what would become the Trade Act of 1974 states with regard to floor consideration of resolutions of disapproval:

> *Procedural Rules:* . . . . Floor consideration of resolutions of disapproval would be substantially similar to those provided for implementing bills and approval resolutions under section 151. The time limits for final vote on resolutions of disapproval, in each case, are set out in the particular substantive provisions of the bill to which the veto procedures apply.

S. REP. NO. 93-1298, at 110-11 (1974).

Section 9(c)(2)(B) of the Burmese Freedom and Democracy Act of 2003, Pub. L. No. 108-61, 117 Stat. 864, 869 (July 28, 2003), applies this subsection to a renewal resolution under that Act as if that resolution were a resolution described in section 152(a) of the Trade Act of 1974, *supra* p. 123.

the consideration of a resolution[142] shall be highly privileged and not debatable. An amendment to the motion shall not be in order, nor shall it be in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

§ 152(d)(2) **(2) Debate in the House of Representatives on a resolution[143] shall be limited to not more than 20 hours, which shall be divided equally between those favoring and those opposing the resolution. A motion further to limit debate shall not be debatable. No amendment to, or motion to recommit, the resolution shall be in order. It shall not be in order to move to reconsider the vote by which a resolution is agreed to or disagreed to.**

§ 152(d)(3) **(3) Motions to postpone, made in the House of Representatives with respect to the consideration of a resolution,[144] and motions to proceed to the consideration of other business, shall be decided without debate.[145]**

§ 152(d)(4) **(4) All appeals from the decisions of the Chair relating to the application of the Rules of the House of Representatives**

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[142] For purposes of this section, section 152(a)(1) defines the term "resolution." *See supra* p. 126.

[143] For purposes of this section, section 152(a)(1) defines the term "resolution." *See supra* p. 126.

[144] For purposes of this section, section 152(a)(1) defines the term "resolution." *See supra* p. 126.

[145] The House Parliamentarian has written:

> Although a motion that the House resolve itself into the Committee of the Whole is not ordinarily subject to the motion to postpone indefinitely (VI, 726), the motion to postpone indefinitely may be offered pursuant to the provisions of this statute, is nondebatable, and represents final adverse disposition of the disapproval resolution (Mar. 10, 1977, p. 7021).

CHARLES W. JOHNSON, CONSTITUTION, JEFFERSON'S MANUAL, AND RULES OF THE HOUSE OF REPRESENTATIVES § 1130(11D), at 1075 (2001) (H. Doc. 106-320).

to the procedure relating to a resolution[146] shall be decided without debate.

§ 152(d)(5) **(5) Except to the extent specifically provided in the preceding provisions of this subsection, consideration of a resolution[147] in the House of Representatives shall be governed by the Rules of the House of Representatives applicable to other resolutions in similar circumstances.**

§ 152(e) **(e) FLOOR CONSIDERATION IN THE SENATE.[148] —**

§ 152(e)(1) **(1) A motion in the Senate to proceed to the consideration of a resolution[149] shall be privileged.[150] An amendment to the**

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[146] For purposes of this section, section 152(a)(1) defines the term "resolution." *See supra* p. 126.

[147] For purposes of this section, section 152(a)(1) defines the term "resolution." *See supra* p. 126.

[148] The Senate Finance Committee report on what would become the Trade Act of 1974 states with regard to floor consideration of resolutions of disapproval:

> *Procedural Rules:* . . . . Floor consideration of resolutions of disapproval would be substantially similar to those provided for implementing bills and approval resolutions under section 151. The time limits for final vote on resolutions of disapproval, in each case, are set out in the particular substantive provisions of the bill to which the veto procedures apply.

S. REP. NO. 93-1298, at 110-11 (1974).

Section 9(c)(2)(B) of the Burmese Freedom and Democracy Act of 2003, Pub. L. No. 108-61, 117 Stat. 864, 869 (July 28, 2003), applies this subsection to a renewal resolution under that Act as if that resolution were a resolution described in section 152(a) of the Trade Act of 1974, *supra* p. 123.

[149] For purposes of this section, section 152(a)(1) defines the term "resolution." *See supra* p. 126.

[150] The consequences of privilege include:

> When a privileged matter is pending before the Senate for disposition, it is subject to any of the motions specified in Rule XXII.

(continued...)

motion shall not be in order,[151] nor shall it be in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

§ 152(e)(2) **(2) Debate in the Senate on a resolution,[152] and all debatable motions and appeals in connection therewith,[153] shall be**

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[150](...continued)

Privileged business . . . do not have to lie over a day before consideration.

. . . .

The consideration of privileged business or privileged matters . . . does not displace the unfinished business or pending business, but merely suspends its consideration until the privileged business is disposed of.

. . . .

A privileged matter under consideration in the Senate may be displaced by another privileged matter by a majority vote . . . . A motion to proceed to the consideration of a bill is not displaced by . . . the transaction of privileged business or business transacted by unanimous consent.

ALAN S. FRUMIN, RIDDICK'S SENATE PROCEDURE 1035-36 (1992) ("Privileged Business") <http://www.gpoaccess.gov/riddick/1034-1037.pdf>.

During the consideration of one privileged matter (for example, an S. numbered bill), the Senate's adoption of a motion to proceed to a second privileged matter (for example, an H.R. numbered bill), places the first matter (here, the S. bill) on the Calendar. *Cf.* 127 CONG. REC. S4871 (1981); Senate Precedent PRL19810512-001 (May 12, 1981) (response of the Chair to motion by Majority Leader Baker with regard to budget resolutions). In contrast, if the Senate agrees by unanimous consent to take up the second privileged matter, the result is different, leaving the first privileged matter pending at the end of consideration of the second privileged matter. *Compare* ALAN S. FRUMIN, RIDDICK'S SENATE PROCEDURE 664-65 (1992) (displacement by motion) <http://www.gpoaccess.gov/riddick/655-682.pdf>, *with id.* at 669 (displacement by unanimous consent).

[151] Section 151(d) sets forth a parallel prohibition of amendments to an implementing bill or approval resolution. *See supra* p. 81 and note 57.

[152] For purposes of this section, section 152(a)(1) defines the term "resolution." *See supra* p. 126.

[153] For a discussion of "debatable motion or appeal," see *infra* note 156.

limited to not more than 20 hours,[154] to be equally divided between, and controlled by, the majority leader and the minority leader or their designees.[155]

§ 152(e)(3)

(3) Debate in the Senate on any debatable motion or appeal[156] in connection with a resolution[157] shall be limited to not more than 1 hour, to be equally divided between, and controlled by, the mover and the manager of the resolution, except that in the event the manager of the resolution is in favor of any such motion or appeal, the time in opposition thereto, shall be controlled by the minority leader or his designee. Such leaders, or either of them, may, from time under their control on the passage of a resolution, allot additional time to any Senator during the consideration of

[154] This is the same amount of time that section 151(g)(2) provides for consideration of implementing bills or approval resolutions (*see supra* p. 113) and that the Congressional Budget Act allows for consideration of reconciliation bills. *See* Congressional Budget Act of 1974, § 310(e)(2), 2 U.S.C. § 641(e)(2).

[155] Section 151(g)(2) sets forth a parallel provision governing control of time for consideration of an implementing bill or approval resolution. *See supra* p. 113 and note 110.

[156] A "debatable motion or appeal" could include an appeal of a ruling of the chair (*see, e.g.*, 139 CONG. REC. S16,352 (daily ed. Nov. 19, 1993) (appeal during consideration of an implementing bill)) or a motion to postpone indefinitely or to a day certain. *See* Senate Standing Rule XXII <http://rules.senate.gov/senaterules/rule22.htm>.

A motion to recommit is not in order under section 152(e)(4). *See* p. 145. Even though a motion to proceed to a non-privileged measure is generally in order at any time, even during the consideration of a privileged matter (*see* ALAN S. FRUMIN, RIDDICK'S SENATE PROCEDURE 664 (1992) ("While one measure . . . even if privileged . . . is pending before the Senate, a motion to take up a non-privileged measure . . . is in order at any time . . . .") <http://www.gpoaccess.gov/riddick/655-682.pdf>; *see also id.* at 1036 ("a privileged matter may by displaced by a majority vote to proceed to the consideration of a non-privileged matter") <http://www.gpo.gov/congress/senate/riddick/1034-1037.pdf>), in July and August of 2003, the Parliamentarian's office advised that during consideration of legislation under the fast-track procedures of the Trade Act of 1974, a motion to proceed to a non-privileged matter would not be in order, as it would impose a time limit on what would otherwise be a fully debatable matter, and deprive Senators of their right to filibuster the motion to proceed.

[157] For purposes of this section, section 152(a)(1) defines the term "resolution." *See supra* p. 126.

any debatable motion or appeal.[158]

§ 152(e)(4) **(4) A motion in the Senate to further limit debate on a resolution,**[159] **debatable motion, or appeal is not debatable. No amendment to, or motion to recommit,**[160] **a resolution is in order in the Senate.**

§ 152(f) **(f) PROCEDURES IN THE SENATE.**[161] **—**

§ 152(f)(1) **(1) Except as otherwise provided in this section, the following procedures shall apply in the Senate to a resolution**[162] **to which this section applies:**[163]

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[158] For discussion of the workings of the parallel provision in section 151(g)(3), see *supra* note 115, p. 120.

[159] For purposes of this section, section 152(a)(1) defines the term "resolution." *See supra* p. 126.

[160] For a discussion of the motion to recommit in the Senate, see *generally* ALAN S. FRUMIN, RIDDICK'S SENATE PROCEDURE 1106-23 (1992) ("Recommit") <http://www.gpoaccess.gov/riddick/1106-1123.pdf>.

[161] Section 9(c)(2)(B) of the Burmese Freedom and Democracy Act of 2003, Pub. L. No. 108-61, 117 Stat. 864, 869 (July 28, 2003), applies this subsection to a renewal resolution under that Act as if that resolution were a resolution described in section 152(a) of the Trade Act of 1974, *supra* p. 123.

[162] For purposes of this section, section 152(a)(1) defines the term "resolution." *See supra* p. 126.

[163] The Customs and Trade Act of 1990, Pub. L. No. 101-382, § 132(c)(5), 104 Stat. 629, 647 (Aug. 20, 1990), amended subsection (f) to read as it does now. Previously, subsection (f) read:

> (f) SPECIAL RULE FOR CONCURRENT RESOLUTIONS. — In the case of a resolution described in subsection (a)(1), if prior to the passage by one House of a resolution of that House, that House receives a resolution with respect to the same matter from the other House, then —
>
> (1) the procedure in that House shall be the same as if no resolution had been received from the other House; but
>
> (2) the vote on final passage shall be on the resolution of the other House.

(continued...)

§ 152(f)(1)(A)(i)

(A) (i) Except as provided in clause (ii),[164] a resolution[165] that has passed the House of Representatives shall, when received in the Senate, be referred to the Committee on Finance for consideration in accordance with this section.

§ 152(f)(1)(A)(ii)

(ii) If a resolution[166] to which this section applies was introduced in the Senate before receipt of a resolution that has passed the House of Representatives, the resolution from the House of Representatives shall, when received in the Senate, be placed on the calendar. If this clause applies, the procedures in the Senate with respect to a resolution introduced in the Senate that contains the identical matter as the resolution that passed the House of Representatives shall be the same as if no resolution had been received from the House of Representatives, except that the vote on passage in the Senate shall be on the resolution that passed the House of Representatives.

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[163](...continued)
Trade Act of 1974, Pub. L. No. 93-618, § 152(f), 88 Stat. 1978, 2006 (amended 1990).

The Senate Finance Committee report on what would become the Trade Act of 1974 states with regard to the procedures of this subsection:

> Special provision has been made for concurrent resolutions to allow simultaneous consideration of the resolutions by each House, but providing that the resolution first passed by either House would be the one on which the other House will vote with respect to final passage.

S. REP. NO. 93-1298, at 111 (1974).

[164] *See infra* p. 146.

[165] For purposes of this section, section 152(a)(1) defines the term "resolution." *See supra* p. 126.

[166] For purposes of this section, section 152(a)(1) defines the term "resolution." *See supra* p. 126.

§ 152(f)(1)(B) **(B) If the Senate passes a resolution[167] before receiving from the House of Representatives a joint resolution that contains the identical matter, the joint resolution shall be held at the desk pending receipt of the joint resolution from the House of Representatives. Upon receipt of the joint resolution from the House of Representatives, such joint resolution shall be deemed to be read twice, considered, read the third time,[168] and passed.**

§ 152(f)(2) **(2) If the texts of joint resolutions[169] described in section 152[170] or 153(a),[171] whichever is applicable, concerning any matter are not identical —**

§ 152(f)(2)(A) **(A) the Senate shall vote passage on the resolution[172] introduced in the Senate, and**

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[167] For purposes of this section, section 152(a)(1) defines the term "resolution." *See supra* p. 126.

[168] "Third reading" means:

> A required reading to a chamber of a bill or joint resolution by title only, before the vote on passage. The original purpose of a third reading was to give members the opportunity to hear the full text of the measure, as it may have amended, before voting on it. In modern practice, it has become a pro forma step.

CONGRESSIONAL QUARTERLY, AMERICAN CONGRESSIONAL DICTIONARY. *See generally* ALAN S. FRUMIN, RIDDICK'S SENATE PROCEDURE 245-47 (1992) ("Third Reading") <http://www.gpoaccess.gov/riddick/225-251.pdf>.

[169] For purposes of this section, section 152(a)(1) defines the term "resolution." *See supra* p. 126.

[170] This section.

[171] *See infra* p. 151.

[172] For purposes of this section, section 152(a)(1) defines the term "resolution." *See supra* p. 126.

§ 152(f)(2)(B)

(B) the text of the joint resolution[173] passed by the Senate shall, immediately upon its passage (or, if later, upon receipt of the joint resolution passed by the House), be substituted for the text of the joint resolution passed by the House of Representatives, and such resolution, as amended, shall be returned with a request for a conference between the two Houses.

§ 152(f)(3)

(3) Consideration in the Senate of any veto message with respect to a joint resolution[174] described in subsection (a)(2)(B)[175] or section 153(a),[176] including consideration of all debatable motions and appeals in connection therewith, shall be limited to 10 hours, to be equally divided between, and controlled by, the majority leader and the minority leader or their designees.

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[173] For purposes of this section, section 152(a)(1) defines the term "resolution." *See supra* p. 126.

[174] For purposes of this section, section 152(a)(1) defines the term "resolution." *See supra* p. 126.

[175] Subsection (a)(2)(B) no longer exists.

[176] *See infra* p. 151.

§153

SEC. 153. RESOLUTIONS RELATING TO EXTENSION OF WAIVER AUTHORITY UNDER SECTION 402[177] OF THE TRADE ACT OF 1974

[177] Section 402 of the Trade Act of 1974, commonly referred to as the "Jackson-Vanik amendment," is codified as amended at 19 U.S.C. § 2432, and states:

SEC. 402. FREEDOM OF EMIGRATION IN EAST-WEST TRADE

(a) ACTIONS OF NONMARKET ECONOMY COUNTRIES MAKING THEM INELIGIBLE FOR NORMAL TRADE RELATIONS, PROGRAMS OF CREDITS, CREDIT GUARANTEES, OR INVESTMENT GUARANTEES, OR COMMERCIAL AGREEMENTS. — To assure the continued dedication of the United States to fundamental human rights, and notwithstanding any other provision of law, on or after the date of the enactment of this Act [Jan. 3, 1975] products from any nonmarket economy country shall not be eligible to receive nondiscriminatory treatment (normal trade relations), such country shall not participate in any program of the Government of the United States which extends credits or credit guarantees or investment guarantees, directly or indirectly, and the President of the United States shall not conclude any commercial agreement with any such country, during the period beginning with the date on which the President determines that such country —

(1) denies its citizens the right or opportunity to emigrate;

(2) imposes more than a nominal tax on emigration or on the visas or other documents required for emigration, for any purpose or cause whatsoever; or

(3) imposes more than a nominal tax, levy, fine, fee, or other charge on any citizen as a consequence of the desire of such citizen to emigrate to the country of his choice, and ending on the date on which the President determines that such country is no longer in violation of paragraph (1), (2), or (3).

(b) PRESIDENTIAL DETERMINATION AND REPORT TO CONGRESS THAT NATION IS NOT VIOLATING FREEDOM OF EMIGRATION. — After the date of the enactment of this Act [Jan. 3, 1975],

(A) products of a nonmarket economy country may be eligible to receive nondiscriminatory treatment (normal trade relations),

(B) such country may participate in any program of the Government of the United States which extends credits or credit guarantees or investment guarantees, and

(C) the President may conclude a commercial agreement with such country, only after the President has submitted to the Congress a report indicating that such country is not in violation of paragraph (1), (2), or (3) of subsection (a).

(continued...)

[177](...continued)
Such report with respect to such country shall include information as to the nature and implementation of emigration laws and policies and restrictions or discrimination applied to or against persons wishing to emigrate. The report required by this subsection shall be submitted initially as provided herein and, with current information, on or before each June 30 and December 31 thereafter so long as such treatment is received, such credits or guarantees are extended, or such agreement is in effect.

(c) WAIVER AUTHORITY OF PRESIDENT. —

(1) During the 18-month period beginning on the date of the enactment of this Act [Jan. 3, 1975], the President is authorized to waive by Executive order the application of subsections (a) and (b) with respect to any country, if he reports to the Congress that —

(A) he has determined that such waiver will substantially promote the objectives of this section; and

(B) he has received assurances that the emigration practices of that country will henceforth lead substantially to the achievement of the objectives of this section.

(2) During any period subsequent to the 18-month period referred to in paragraph (1), the President is authorized to waive by Executive order the application of subsections (a) and (b) with respect to any country, if the waiver authority granted by this subsection continues to apply to such country pursuant to subsection (d), and if he reports to the Congress that —

(A) he has determined that such waiver will substantially promote the objectives of this section; and

(B) he has received assurances that the emigration practices of that country will henceforth lead substantially to the achievement of the objectives of this section.

(3) A waiver with respect to any country shall terminate on the day after the waiver authority granted by this subsection ceases to be effective with respect to such country pursuant to subsection (d). The President may, at any time, terminate by Executive order any waiver granted under this subsection.

(d) EXTENSION OF WAIVER AUTHORITY. —

(1) If the President determines that the further extension of the waiver authority granted under subsection (c) will substantially promote the objectives of this section, he may recommend further extensions of such authority for successive 12-month periods. Any such recommendations shall —

(A) be made not later than 30 days before the expiration of such authority;

(continued...)

§ 153(a) **(a) CONTENTS OF RESOLUTION. — For purposes of this section, the term "resolution" means only a joint resolution of the**

[177](...continued)

(B) be made in a document transmitted to the House of Representatives and the Senate setting forth his reasons for recommending the extension of such authority; and

(C) include, for each country with respect to which a waiver granted under subsection (c) is in effect, a determination that continuation of the waiver applicable to that country will substantially promote the objectives of this section, and a statement setting forth his reasons for such determination. If the President recommends the further extension of such authority, such authority shall continue in effect until the end of the 12-month period following the end of the previous 12-month extension with respect to any country (except for any country with respect to which such authority has not been extended under this subsection), unless a joint resolution described in section 153(a) is enacted into law pursuant to the provisions of paragraph (2).

(2) (A) The requirements of this paragraph are met if the joint resolution is enacted under the procedures set forth in section 153, and —

(i) the Congress adopts and transmits the joint resolution to the President before the end of the 60-day period beginning on the date the waiver authority would expire but for an extension under paragraph (1), and

(ii) if the President vetoes the joint resolution, each House of Congress votes to override such veto on or before the later of the last day of the 60-day period referred to in clause (i) or the last day of the 15-day period (excluding any day described in section 154(b)) beginning on the date the Congress receives the veto message from the President.

(B) If a joint resolution is enacted into law under the provisions of this paragraph, the waiver authority applicable to any country with respect to which the joint resolution disapproves of the extension of such authority shall cease to be effective as of the day after the 60-day period beginning on the date of the enactment of the joint resolution.

(C) A joint resolution to which this subsection and section 153 apply may be introduced at any time on or after the date the President transmits to the Congress the document described in paragraph (1)(B).

(e) COUNTRIES NOT COVERED. — This section shall not apply to any country the products of which are eligible for the rates set forth in rate column numbered 1 of the Tariff Schedules of the United States on the date of the enactment of this Act [Jan. 3, 1975].

19 U.S.C. § 2432.

two Houses of Congress, the matter after the resolving clause of which is as follows: "That the Congress does not approve the extension of the authority contained in section 402(c)[178] of the Trade Act of 1974 recommended by the President to the Congress on _____ with respect to _____", with the first blank space being filled with the appropriate date, and the second blank space being filled with the names of those countries, if any, with respect to which such extension of authority is not approved, and with the clause beginning with "with respect to" being omitted if the extension of the authority is not approved with respect to any country.[179]

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[178] *See supra* note 177, p. 150.

[179] The Joint statement of managers accompanying the conference report on the Trade Act of 1974 includes the following discussion of the resolutions contemplated by this section:

> Amendments Nos. 159, 160, 161, and 162: Section 151 of the bill as passed by the House contained a procedure for congressional disapproval with respect to nontariff barrier trade agreements submitted to Congress, to escape clause actions to retaliation against unfair trade practices, and to extension or continuation of nondiscriminatory tariff treatment. Under this procedure, the President was to transmit a proclamation or agreement to the Congress, after 7 days it was in order to discharge the committee to which a resolution of disapproval had been referred, and, if either House approved the resolution of disapproval within a 90-day period, the agreement or proclamation was not to take effect.
>
> The Senate amendments strike out section 151 of the House bill and insert new sections 151, 152, and 153. Under these amendments, a congressional approval procedure applies to all nontariff barrier trade agreements, to agreements establishing certain principles in international trade (including GATT revisions) which change federal law (including a material change in an administrative rule), and to bilateral trade agreements with nonmarket countries entered into after the date of the enactment of the bill. . . .
>
> Under the Senate amendments, provision is also made for two-House disapproval for Presidential import relief which differs from the Commission's recommendation, and for Presidential retaliation on an MFN [most-favored nation] basis against unjustifiable or unreasonable restrictions. Under these procedures, if both Houses do not adopt a concurrent resolution within the applicable time period, the Presidential action enters into force.
>
> Finally, under the Senate amendments, a one-House disapproval procedure is established (1) for the determination of the Secretary of the Treasury not to apply

(continued...)

§ 153(b) **(b) APPLICATION OF RULES OF SECTION 152[180]; EXCEPTIONS. —**

§ 153(b)(1) **(1) Except as provided in this section, the provisions of section 152[181] shall apply to resolutions described in subsection (a).[182]**

§ 153(b)(2) **(2) In applying section 152(c)(1),[183] all calendar days shall be counted.**

§ 153(b)(3) **(3) That part of section 152(d)(2)[184] which provides that no amendment is in order shall not apply to any amendment to a resolution which is limited to striking out or inserting the names of one or more countries or to striking out or inserting a with-respect-to clause. Debate in the House of Representatives on any amendment to a resolution shall be limited to not more than 1 hour which shall be equally divided between those favoring and those opposing the amendment. A motion in the House to further limit debate on an amendment to a**

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[179](...continued)
countervailing duties during a 2-year discretionary period, (2) for extension of benefits under bilateral trade agreements with nonmarket countries entered into before the date of the enactment of the bill, (3) to all annual reviews of MFN treatment and government credits and guarantees to countries receiving benefits negotiated under title IV of the bill, and (4) to U.S. Government credits and investment guarantees extended after the date of the enactment of the bill. This one-House disapproval procedure is the same as the two-House procedure provided by the Senate amendments except that adoption by majority vote of those present and voting in *either* House is sufficient to prevent action. The House recedes with clarifying and conforming amendments.

H.R. REP. NO. 93-1644, as 32-33 (1974).

[180] *See supra* p. 123.

[181] *See supra* p. 123.

[182] *See supra* p. 151.

[183] *See supra* p. 138.

[184] *See supra* p. 141.

resolution is not debatable.

§ 153(b)(4) **(4) That part of section 152(e)(4)[185] which provides that no amendment is in order shall not apply to any amendment to a resolution which is limited to striking out or inserting the names of one or more countries or to striking out or inserting a with-respect-to clause. The time limit on a debate on a resolution in the Senate under section 152(e)(2)[186] shall include all amendments to a resolution. Debate in the Senate on any amendment to a resolution shall be limited to not more than 1 hour, to be equally divided between, and controlled by, the mover and the manager of the resolution, except that in the event the manager of the resolution is in favor of any such amendment, the time in opposition thereto shall be controlled by the minority leader or his designee. The majority leader and minority leader may, from time under their control on the passage of a resolution, allot additional time to any Senator during the consideration of any amendment.[187] A motion in the Senate to further limit debate on an amendment to a resolution is not debatable.**

§ 153(c) **(c) CONSIDERATION OF SECOND RESOLUTION NOT IN ORDER. — It shall not be in order in either the House of Representatives or the Senate to consider a resolution with respect to a recommendation of the President under section 402(d)[188] (other than a**

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[185] *See supra* p. 145.

[186] *See supra* p. 143.

[187] For discussion of the workings of the parallel provision in section 151(g)(3), see *supra* note 115, p. 120.

[188] *See supra* note 177, p. 150.

resolution described in subsection (a)[189] received from the other House), if that House has adopted a resolution with respect to the same recommendation.

§ 153(d) **(d) PROCEDURES RELATING TO CONFERENCE REPORTS IN THE SENATE. —**

§ 153(d)(1) **(1) Consideration in the Senate of the conference report on any joint resolution described in subsection (a),[190] including consideration of all amendments in disagreement (and all amendments thereto), and consideration of all debatable motions and appeals in connection therewith, shall be limited to 10 hours, to be equally divided between, and controlled by, the majority leader and the minority leader or their designees. Debate on any debatable motion or appeal related to the conference report shall be limited to 1 hour, to be equally divided between, and controlled by, the mover and the manager of the conference report.**

§ 153(d)(2) **(2) In any case in which there are amendments in disagreement, time on each amendment shall be limited to 30 minutes, to be equally divided between, and controlled by, the manager of the conference report and the minority leader or his designee. No amendment to any amendment in disagreement shall be received unless it is a germane amendment.[191]**

[189] *See supra* p. 151.

[190] *See supra* p. 151.

[191] For a discussion of germaneness, see *generally* ALAN S. FRUMIN, RIDDICK'S SENATE PROCEDURE 854-62 (1992) ("Germaneness of Amendments") <http://www.gpoaccess.gov/riddick/854-862.pdf>. The Senate Parliamentarian has spelled out these general guidelines:

Although the precedents of the Senate with respect to germaneness of amendments

(continued...)

[191](...continued)
reflect various conclusions, it has generally been understood that germaneness is more restrictive than relevancy. However, in order to be germane, an amendment must at least be relevant. Therefore, while a simple restriction on the effect of a measure would generally be germane, a restriction subject to an irrelevant contingency would not be germane.

The Senate usually imposes a germaneness requirement when it decides to limit debate on a proposal. In this sense, the Senate enters into a contract whereby it promises to bring a measure to a vote in exchange for a promise that the measure to be voted on will consist of known and foreseeable issues. Since it is difficult to know in advance the limits what proposals might be relevant to a measure, the precedents interpreting germaneness have generally imposed a more restrictive standard than simple relevancy.

The following are among the questions that are considered in determining whether an amendment is germane: does it add any new subject matter? does it expand the powers, authorities, or constraints being proposed? does it amend existing law or another measure, as opposed to the measure before the Senate? does it involve another class of persons not otherwise covered by the measure? does it involve additional administrative entities? is it within the jurisdiction of the committee that reported the measure? and is it foreseeable?

Amendments fall into four classes for the purpose of determining germaneness. Amendments in the first two classes are considered germane *per se*. Class one consists of amendments that strike language without inserting other language. Class two consists of amendments that change numbers and dates. Class three consists of amendments that propose nonbinding language (such as sense of Senate or sense of Congress language). Under recent practice, if such nonbinding language is within the jurisdiction of the committee that reported the measure, the amendment is considered germane.

The fourth class consists of amendments that add language to a measure, but do not fall into either class two or three.

In determining whether an amendment is germane, the Chair first identifies in which of these four classes an amendment belongs. If an amendment falls within any of the first three classes, it will be considered germane. All other amendments are examined on a case by case basis to determine if they are germane. Such examination requires a detailed analysis of the amendment and the matter to be amended, and takes into account the principles and guidelines stated above.

Id. at 854-55.

§ 154

SEC. 154. SPECIAL RULES RELATING TO CONGRESSIONAL PROCEDURES

§ 154(a)

(a) DELIVERY OF DOCUMENTS TO BOTH HOUSES. — Whenever, pursuant to section 102(e),[192] 203(b),[193] 402(d),[194]

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[192] Section 102(e) is codified as amended at 19 U.S.C. § 2112(e), and states:

(e) STEPS PREREQUISITE TO ENTRY INTO FORCE OF TRADE AGREEMENTS. — Each trade agreement submitted to the Congress under this subsection shall enter into force with respect to the United States if (and only if) —

(1) the President, not less than 90 days before the day on which he enters into such trade agreement, notifies the House of Representatives and the Senate of his intention to enter into such an agreement, and promptly thereafter publishes notice of such intention in the Federal Register;

(2) after entering into the agreement, the President transmits a document to the House of Representatives and to the Senate containing a copy of the final legal text of such agreement together with —

(A) a draft of an implementing bill and a statement of any administrative action proposed to implement such agreement, and an explanation as to how the implementing bill and proposed administrative action change or affect existing law, and

(B) a statement of his reasons as to how the agreement serves the interests of United States commerce and as to why the implementing bill and proposed administrative action is required or appropriate to carry out the agreement; and

(3) the implementing bill is enacted into law.

19 U.S.C. § 2112(e).

[193] Section 203(b) is codified as amended at 19 U.S.C. § 2253(b), and states:

(b) REPORTS TO CONGRESS. —

(1) On the day the President takes action under subsection (a)(1), the President shall transmit to Congress a document describing the action and the reasons for taking the action. If the action taken by the President differs from the action required to be recommended by the Commission under section 202(e)(1) [19 U.S.C. § 2252(e)(1)], the President shall state in detail the reasons for the difference.

(2) On the day on which the President decides that there is no appropriate and feasible action to take under subsection (a)(1) with respect to a domestic industry,

(continued...)

[193](...continued)
the President shall transmit to Congress a document that sets forth in detail the reasons for the decision.

(3) On the day on which the President takes any action under subsection (a)(1) that is not reported under paragraph (1), the President shall transmit to Congress a document setting forth the action being taken and the reasons therefor.

19 U.S.C. § 2253(b).

[194] Section 402(d) of the Trade Act of 1974, commonly referred to as the "Jackson-Vanik amendment," is codified as amended at 19 U.S.C. § 2432(d), and states:

(d) EXTENSION OF WAIVER AUTHORITY. —

(1) If the President determines that the further extension of the waiver authority granted under subsection (c) will substantially promote the objectives of this section, he may recommend further extensions of such authority for successive 12-month periods. Any such recommendations shall —

(A) be made not later than 30 days before the expiration of such authority;

(B) be made in a document transmitted to the House of Representatives and the Senate setting forth his reasons for recommending the extension of such authority; and

(C) include, for each country with respect to which a waiver granted under subsection (c) is in effect, a determination that continuation of the waiver applicable to that country will substantially promote the objectives of this section, and a statement setting forth his reasons for such determination. If the President recommends the further extension of such authority, such authority shall continue in effect until the end of the 12-month period following the end of the previous 12-month extension with respect to any country (except for any country with respect to which such authority has not been extended under this subsection), unless a joint resolution described in section 153(a) is enacted into law pursuant to the provisions of paragraph (2).

(2) (A) The requirements of this paragraph are met if the joint resolution is enacted under the procedures set forth in section 153, and —

(i) the Congress adopts and transmits the joint resolution to the President before the end of the 60-day period beginning on the date the waiver authority would expire but for an extension under paragraph (1), and

(ii) if the President vetoes the joint resolution, each House of Congress votes to override such veto on or before the later of the last day of the 60-day period referred to in clause (i) or the last day of the 15-day period (excluding any day described in section 154(b)) beginning on the date the Congress

(continued...)

or 407(a) or (b),[195] a document is required to be transmitted to the Congress, copies of such document shall be delivered to both Houses of Congress on the same day and shall be delivered to the Clerk of the House of Representatives if the House is not in session and to the Secretary of the Senate[196] if the Senate is not

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[194](...continued)

receives the veto message from the President.

(B) If a joint resolution is enacted into law under the provisions of this paragraph, the waiver authority applicable to any country with respect to which the joint resolution disapproves of the extension of such authority shall cease to be effective as of the day after the 60-day period beginning on the date of the enactment of the joint resolution.

(C) A joint resolution to which this subsection and section 153 apply may be introduced at any time on or after the date the President transmits to the Congress the document described in paragraph (1)(B).

19 U.S.C. § 2432.

[195] Section 407(a) - (b) is codified as amended at 19 U.S.C. § 2437(a) - (b), and states:

SEC. 407. PROCEDURE FOR CONGRESSIONAL APPROVAL OR DISAPPROVAL OF EXTENSION OF NONDISCRIMINATORY TREATMENT AND PRESIDENTIAL REPORTS

(a) TRANSMISSION OF NONDISCRIMINATORY TREATMENT DOCUMENTS TO CONGRESS. — Whenever the President issues a proclamation under section 404 [19 U.S.C. § 2434] extending nondiscriminatory treatment to the products of any foreign country, he shall promptly transmit to the House of Representatives and to the Senate a document setting forth the proclamation and the agreement the proclamation proposes to implement, together with his reasons therefor.

(b) TRANSMISSION OF FREEDOM OF EMIGRATION DOCUMENTS TO CONGRESS. — The President shall transmit to the House of Representatives and the Senate a document containing the initial report submitted by him under section 402(b) [19 U.S.C. § 2432(b)] or 409(b) [19 U.S.C. § 2439(b)] with respect to a nonmarket economy country. On or before December 31 of each year, the President shall transmit to the House of Representatives and the Senate, a document containing the report required by section 402(b) [19 U.S.C. § 2432(b)] or 409(b) [19 U.S.C. § 2439(b)] as the case may be, to be submitted on or before such December 31.

19 U.S.C. § 2437(a) - (b).

[196] The "Secretary of the Senate" means:

The chief financial, administrative, and legislative officer of the Senate. Elected by

(continued...)

in session.[197]

§ 154(b) **(b) COMPUTATION OF 90-DAY PERIOD. — For purposes of sections 203(c)[198] and 407(c)(2),[199] the 90-day period referred to**

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[196](...continued)
resolution or order of the Senate, the secretary is invariably the candidate of the majority party and usually the choice of the majority leader. In the absence of the vice president and pending the election of a president pro tempore, the secretary presides over the Senate. The secretary is subject to policy direction and oversight by the Senate Committee on Rules and Administration. The secretary manages a wide range of functions that support the administrative operations of the Senate as an organization as well as those functions necessary to its legislative process, including recordkeeping, document management, certifications, housekeeping services, administration of oaths, and lobbyist registrations.

CONGRESSIONAL QUARTERLY, AMERICAN CONGRESSIONAL DICTIONARY.

[197] The Senate Finance Committee report on what would become the Trade Act of 1974 states with regard to the procedures of this subsection:

SPECIAL RULES RELATING TO CONGRESSIONAL PROCEDURES

(Section 153)

Section 153 of the bill would govern the mechanics of transmitting documents of approval or disapproval to the Congress . . . .

S. REP. NO. 93-1298, at 111 (1974).

The House Ways and Means Committee report on what would become the Trade Act of 1974 states with regard to transmittal of documents:

Section 152. Special rules relating to congressional disapproval procedures

Section 152(a) of the bill provides that whenever, pursuant to section 102(f), 204(b), 302(b), or 406(a) and (b) of the bill, a document is required to be transmitted to the Congress, copies of such document shall be delivered to both Houses of Congress on the same day and shall be delivered to the Clerk of the House of Representatives if the House is not in session and to the Secretary of the Senate if the Senate is not in session.

H.R. REP. NO. 93-571, at 110 (1973).

[198] Section 203(c) is codified as amended at 19 U.S.C. § 2253(c), and states:

(c) IMPLEMENTATION OF ACTION RECOMMENDED BY COMMISSION. — If the
(continued...)

in such sections[200] shall be computed by excluding —

[198](...continued)
President reports under subsection (b)(1) or (2) that —

(1) the action taken under subsection (a)(1) differs from the action recommended by the Commission under section 202(e)(1) [19 U.S.C. § 2252(e)(1)]; or

(2) no action will be taken under subsection (a)(1) with respect to the domestic industry;

the action recommended by the Commission shall take effect (as provided in subsection (d)(2)) upon the enactment of a joint resolution described in section 152(a)(1)(A) [19 U.S.C. § 2192(a)(1)(A)] within the 90-day period beginning on the date on which the document referred to in subsection (b)(1) or (2) is transmitted to the Congress.

19 U.S.C. § 2253(c).

[199] Section 407(c)(2) is codified as amended at 19 U.S.C. § 2437(c)(2), and states:

(c) EFFECTIVE DATE OF PROCLAMATIONS AND AGREEMENTS; DISAPPROVAL OF REPORTS. —

. . . .

(2) In the case of a document referred to in subsection (b) which contains a report submitted by the President under section 402(b) or 409(b) [19 U.S.C. §§ 2432(b) or 2439(b)] with respect to a nonmarket economy country, if, before the close of the 90-day period beginning on the day on which such document is delivered to the House of Representatives and to the Senate, a joint resolution described in section 152(a)(1)(B) is enacted into law that disapproves of the report submitted by the President with respect to such country, then, beginning with the day after the end of the 60-day period beginning with the date of the enactment of such resolution of disapproval, (A) nondiscriminatory treatment shall not be in force with respect to the products of such country, and the products of such country shall be dutiable at the rates set forth in rate column numbered 2 of the Harmonized Tariff Schedule of the United States, (B) such country may not participate in any program of the Government of the United States which extends credit or credit guarantees or investment guarantees, and (C) no commercial agreement may thereafter be concluded with such country under this title [19 U.S.C. §§ 2431 et seq.]. If the President vetoes the joint resolution, the joint resolution shall be treated as enacted into law before the end of the 90-day period under this paragraph if both Houses of Congress vote to override such veto on or before the later of the last day of such 90-day period or the last day of the 15-day period (excluding any day described in section 154(b) [19 U.S.C. § 2194(b)]) beginning on the date the Congress receives the veto message from the President.

19 U.S.C. § 2437(c)(2).

§ 154(b)(1) **(1) the days on which either House is not in session because of an adjournment of more than 3 days to a day certain or an adjournment of the Congress sine die,[201] and**

§ 154(b)(2) **(2) any Saturday and Sunday, not excluded under paragraph (1),[202] when either House is not in session.[203]**

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[200] Section 152(c)(1) also requires the 30-days period of that section to be computed using the criteria of this subsection. *See supra* p. 138.

[201] "Adjournment sine die" means:

> Final adjournment of a session of Congress; literally, adjournment without a day. The two houses must agree to a privileged concurrent resolution for such an adjournment. A sine die adjournment precludes Congress from meeting again until the next constitutionally fixed date for convening (January 3 of the following year) unless the adjournment resolution provides otherwise or the president calls Congress into special session. When the two houses cannot agree to a time of adjournment, Article II, Section 3 of the Constitution authorizes the president to adjourn both houses until such time as he thinks proper, but no president has ever exercised this authority.

CONGRESSIONAL QUARTERLY, AMERICAN CONGRESSIONAL DICTIONARY.

[202] *See supra* p. 162.

[203] The Senate Finance Committee report on what would become the Trade Act of 1974 states with regard to counting days:

> SPECIAL RULES RELATING TO CONGRESSIONAL PROCEDURES
>
> (Section 153)
>
> Section 153 of the bill would . . . provide that days on which either House is not in session because of an adjournment of more than three days to a day certain or an adjournment *sine die*, and any Saturday or Sunday when either House is not in session, would be excluded in computing the 90 day period for resolutions of disapproval.

S. REP. NO. 93-1298, at 111 (1974).

The House Ways and Means Committee report on what would become the Trade Act of 1974 states with regard to counting days:

> *Section 152. Special rules relating to congressional disapproval procedures*
>
> . . . .

(continued...)

[203](...continued)

Section 152(b) provides that, for purposes of such sections 102(f)(3), 204(b), 302(b), and 406(c), the 90-day period referred to in such sections shall be computed by excluding (1) the days on which either House is not in session because of an adjournment of more than 3 days to a day certain or an adjournment of the Congress sine die; and (2) any Saturday and Sunday, not excluded under clause (1), when either House is not in session.

H.R. REP. NO. 93-571, at 110 (1973).

TRADE ACT OF 2002

§2103

SEC. 2103.[204] TRADE AGREEMENTS AUTHORITY

§ 2103(a)

(a) AGREEMENTS REGARDING TARIFF BARRIERS. —

§ 2103(a)(1)

(1) IN GENERAL. — Whenever the President determines that one or more existing duties or other import restrictions of any foreign country or the United States are unduly burdening and restricting the foreign trade of the United States and that the purposes, policies, priorities, and objectives of this title will be promoted thereby, the President —

§ 2103(a)(1)(A)

(A) may enter into trade agreements with foreign countries[205] before —

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[204] Section 2103 is codified as amended at 19 U.S.C. § 3803.

[205] The joint statement of managers accompanying the conference report on the Trade Act of 2002 states with regard to the President's proclamation authority generally:

SEC. 2103 — TRADE AGREEMENTS AUTHORITY

Present/expired law

Tariff proclamation authority. Section 1102(a) of the 1988 Act provided authority to the President to proclaim modifications in duties without the need for Congressional approval, subject to certain limitations. . . .

. . . .

House amendment

Section 2103 of the House amendment provides:

Proclamation authority. Section 2103(a) would provide the President the authority to proclaim, without Congressional approval, certain duty modifications in a manner very similar to the expired provision. . . .

. . . .

Senate amendment

In most respects, section 2103 of the Senate Amendment is identical to section 2103 of the House Amendment. However, there are several key differences . . . .

(continued...)

[205](...continued)

. . . .

Conference agreement

The Senate recedes to the House amendment with several modifications. . . .

H.R. REP. NO. 107-624, at 159-62 (2002).

The Senate Finance Committee report on the Trade Act of 2002 states with regard to the President's proclamation authority generally:

Section 3. Trade agreements authority

Section 3 provides that the President may enter into trade agreements subject to the trade authorities procedures prescribed in the present bill . . . .

Section 3 contains two different procedures for implementing trade agreements — one for implementing certain results of tariff negotiations, and one for implementing all other results of tariff negotiations, as well as other changes to U.S. law required by trade agreements.

Tariff proclamation authority. Section 3(a) contains the first of these two procedures, commonly referred to as "tariff proclamation authority." Tariff proclamation authority permits the President to proclaim the results of certain tariff negotiations directly into U.S. law, without need for separate legislation.

S. REP. NO. 107-139, at 40 (2002).

The House Ways and Means Committee report on the Trade Act of 2002 states with regard to the President's proclamation authority generally:

5. SECTION 3: TRADE AGREEMENTS AUTHORITY

Present/expired law

Tariff proclamation authority. Section 1102(a) of the 1988 Act provided authority to the President to proclaim modifications in duties without the need for Congressional approval, subject to certain limitations. . . .

. . . .

Explanation of provision

Proclamation authority. Section 3(a) would provide the President the authority to proclaim, without Congressional approval, certain duty modifications in a manner very similar to the expired provision. . . .

(continued...)

[205](...continued)

. . . .

Reason for change

H.R. 3005, as amended, extends to the President the same authority to proclaim tariff modifications as under the 1988 Act. In addition, the President would be given authority to negotiate reciprocal duty eliminations on a sectoral basis within the WTO forum. The Committee believes that the Information Technology Agreement negotiated by the President under the auspices of the WTO to eliminate tariffs for information technology products all over the world was a substantial accomplishment. The Committee recognizes, however, that the President's ability to carry out such agreements is limited because section 111(b) of the Uruguay Round Agreements Act provides the President with proclamation authority applicable only to a limited number of sectors, that is those that were negotiated multilaterally under the WTO and that were the subject of negotiations on reciprocal duty elimination ("zero-for-zero") or harmonization during the Uruguay Round. Because of the success that the Information Technology Agreement promises for U.S. businesses and U.S. workers, the Committee wishes to provide authority for this and similar WTO sector-specific negotiations even if the sector had not been the subject of zero-for-zero negotiations during the Uruguay Round.

Therefore, the purpose of this special tariff proclamation authority is to permit the U.S. Trade Representative to negotiate sector-specific tariff elimination or harmonization agreements at any time during the course of the next round of WTO trade negotiations scheduled for later this year. The emphasis should be on reaching concrete results as soon as possible. The Committee recognizes that other nations may be reluctant to make binding commitments early in the negotiations, on the theory that this reduces their bargaining leverage on other items later in the round. To prevent such concerns from slowing progress on near term tariff elimination agreements, the Committee intends that the special tariff proclamation authority could be used to negotiate provisional agreements which would allow for immediate tariff reductions, but make permanent duty elimination conditional on a final agreement in the new round. This would allow for near term benefits from tariff elimination, while preserving the ability of countries, including the United States, to condition the tariff cuts on a final comprehensive agreement on all subjects under negotiation in the new round.

While the Committee does not intend to limit the possible tariff elimination agreements that could be reached under this authority, it does wish to identify the following areas where it believes that tariff elimination negotiations should be focused before the conclusion of the round as a whole:

- Accelerated tariff elimination in those sectors where consensus can be achieved;

- Geographic expansion of the zero-for-zero tariff agreements reached in the Uruguay Round and in the Information Technology Agreement; and

- Geographic expansion of tariff harmonization agreements reached in the

(continued...)

§ 2103(a)(1)(A)(i) **(i) July 1, 2005;[206] or**

§ 2103(a)(1)(A)(ii) **(ii) July 1, 2007,[207] if trade authorities procedures[208] are extended under subsection (c);[209] and**

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[205](...continued)
Uruguay Round.

H.R. 3005, as amended, would apply the same substantive and procedural requirements to all types of agreements, thus ending the special rules for bilateral versus multilateral agreements.

H.R. REP. NO. 107-249, at 36-39 (2002).

[206] Section 2004(a)(17)(A) of the Miscellaneous Trade and Technical Corrections Act of 2004, Pub. L. No. 108-429, 118 Stat. 2434, 2591 (Dec. 3, 2004), struck "June 1" and inserted "July 1" here.

[207] Section 2004(a)(17)(A) of the Miscellaneous Trade and Technical Corrections Act of 2004, Pub. L. No. 108-429, 118 Stat. 2434, 2591 (Dec. 3, 2004), struck "June 1" and inserted "July 1" here.

[208] Section 2103(b)(3)(A) (*see infra* p. 202) defines "trade authorities procedures" to mean the provisions of section 151 of the Trade Act of 1974 (*see supra* p. 47).

[209] For subsection (c), see *infra* p. 206.

The joint statement of managers accompanying the conference report on the Trade Act of 2002 states with regard to the timing of the President's proclamation authority:

Present/expired law

. . . .

Time period. The authority applied with respect to agreements entered into before June 1, 1991, and until June 1, 1993 unless Congress passed an extension disapproval resolution. The authority was then extended to April 15, 1994, to cover the Uruguay Round of multilateral negotiations under the General Agreement on Tariffs and Trade.

House amendment

. . . .

Time period. Sections 2103(a)(1)(A) and 2103(b)(1)(C) would extend trade promotion authority to agreements entered into before June 1, 2005. An extension until June 1, 2007, would be permitted unless Congress passed a disapproval resolution, as

(continued...)

[209](...continued)
described under section 2103(c).

Senate amendment

In most respects, section 2103 of the Senate Amendment is identical to section 2103 of the House Amendment. . . .

. . . .

Conference agreement

The Senate recedes to the House amendment with several modifications. . . .

H.R. REP. NO. 107-624, at 159-62 (2002).

The Senate Finance Committee report on the Trade Act of 2002 states with regard to the timing of the President's proclamation authority:

Section 3 provides that the President may enter into trade agreements subject to the trade authorities procedures prescribed in the present bill before June 1, 2005 or, if such procedures are extended as provided in section 3(c), before June 1, 2007.

. . . .

Time period. Sections 3(a)(1)(A) and 3(b)(1)(C) grant trade promotion authority for agreements entered into before June 1, 2005. An extension until June 1, 2007 would be permitted unless Congress passed a disapproval resolution, as described under section 3(c).

S. REP. NO. 107-139, at 40, 43 (2002).

The House Ways and Means Committee report on the Trade Act of 2002 states with regard to the timing of the President's proclamation authority:

Present/expired law

. . . .

Time period. The authority applied with respect to agreements entered into before June 1, 1991, and until June 1, 1993 unless Congress passed an extension disapproval resolution. The authority was then extended to April 15, 1994, to cover the Uruguay Round of multilateral negotiations under the General Agreement on Tariffs and Trade.

Explanation of provision

. . . .

(continued...)

§ 2103(a)(1)(B) **(B) may, subject to paragraphs (2)[210] and (3),[211] proclaim —**

§ 2103(a)(1)(B)(i) **(i) such modification or continuance of any existing duty,**

§ 2103(a)(1)(B)(ii) **(ii) such continuance of existing duty-free or excise treatment, or**

§ 2103(a)(1)(B)(iii) **(iii) such additional duties, as the President determines to be required or appropriate to carry out any such trade agreement. The President shall notify the Congress of the President's intention to enter into an agreement under this subsection.**

§ 2103(a)(2) **(2) LIMITATIONS. — No proclamation may be made under paragraph (1)[212] that —**

§ 2103(a)(2)(A) **(A) reduces any rate of duty (other than a rate of duty that does not exceed 5 percent ad valorem on the date of the enactment of this Act[213]) to a rate of duty which is less than 50 percent of the rate of such duty that applies on such date of enactment;**

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[209](...continued)

Time period. Sections 3(a)(1)(A) and 3(b)(1)(C) would extend trade promotion authority to agreements entered into before June 1, 2005. An extension until June 1, 2007, would be permitted unless Congress passed a disapproval resolution, as described under section 3(c).

H.R. REP. NO. 107-249, at 36-38 (2002).

[210] *See infra* p. 172.

[211] *See infra* p. 176.

[212] *See supra* p. 167.

[213] Aug. 6, 2002.

§2103(a)(2)(B) **(B) reduces the rate of duty below that applicable under the Uruguay Round Agreements, on any import sensitive agricultural product; or**

§ 2103(a)(2)(C) **(C) increases any rate of duty above the rate that applied on the date of the enactment of this Act.**[214]

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[214] Aug. 6, 2002.

The joint statement of managers accompanying the conference report on the Trade Act of 2002 states with regard to the limits on the President's proclamation authority:

Present/expired law

Tariff proclamation authority. Section 1102(a) of the 1988 Act provided authority to the President to proclaim modifications in duties without the need for Congressional approval, subject to certain limitations. Specifically, for rates that exceed 5 percent ad valorem, the President could not reduce any rate of duty to a rate less than 50 percent of the rate of duty applying on the date of enactment. Rates at or below 5 percent could be reduced to zero. Any duty reduction that exceeded 50 percent of an existing duty higher than 5 percent or any tariff increase had to be approved by Congress.

. . . .

House amendment

Section 2103 of the House amendment provides:

Proclamation authority. Section 2103(a) would provide the President the authority to proclaim, without Congressional approval, certain duty modifications in a manner very similar to the expired provision. Specifically, for rates that exceed 5 percent ad valorem, the President would not be authorized to reduce any rate of duty to a rate less than 50 percent of the rate of duty applying on the date of enactment. Rates at or below 5 percent ad valorem could be reduced to zero. Any duty reduction that exceeded 50 percent of an existing duty higher than 5 percent or any tariff increase would have to be approved by Congress.

In addition, section 2103(a) would not allow the use of tariff proclamation authority on import sensitive agriculture.

. . . .

Senate amendment

In most respects, section 2103 of the Senate Amendment is identical to section 2103 of the House Amendment. However, there are several key differences, as follows:

(continued...)

[214](...continued)

The Senate Amendment limits the President's proclamation authority with respect to "import sensitive agricultural products," a term defined in section 2113(5) of the Senate Amendment. This limitation differs from the limitation in the House Amendment, inasmuch as it includes certain products subject to tariff rate quotas.

. . . .

Conference agreement

The Senate recedes to the House amendment with several modifications. The Conferees agree to the new definition of import sensitive agriculture in section 2103(a)(2)(B), 2104(b)(2)(A)(i), and 2113(5) of the Senate amendment to encompass products subject to tariff rate quotas, as well as products subject to the lowest tariff reduction in the Uruguay Round.

H.R. REP. NO. 107-624, at 159-62 (2002).

The Senate Finance Committee report on the Trade Act of 2002 states with regard to the limits on the President's proclamation authority:

Section 3(a) puts limits on the President's tariff proclamation authority. Specifically, where a current duty rate exceeds 5 percent ad valorem, the President would not be authorized to reduce it by more than 50 percent. Any greater reduction would have to be approved by Congress. Where a current duty rate is 5 percent ad valorem or less, the President may reduce it or eliminate it without separate congressional approval.

An additional restriction on proclamation authority pertains to tariffs on certain import-sensitive agricultural products. The President may not proclaim reductions of tariff rates on such products below the rates applicable under the Uruguay Round Agreements. Products subject to this restriction are those agricultural products as to which the United States rate of duty was lowered by no more than 2.5 percent on the day the WTO Agreements went into effect (January 1, 1995). Tariff reductions on these products must be approved in separate legislation, described in section 3(b).

Finally, the President may not, by proclamation, increase any rate of duty above the rate applied on the date this bill is enacted. Any such increases will require separate legislation.

S. REP. NO. 107-139, at 41 (2002).

The House Ways and Means Committee report on the Trade Act of 2002 states with regard to the limits on the President's proclamation authority:

Present/expired law

Tariff proclamation authority. Section 1102(a) of the 1988 Act provided authority

(continued...)

[214](...continued)
to the President to proclaim modifications in duties without the need for Congressional approval, subject to certain limitations. Specifically, for rates that exceed 5 percent *ad valorem*, the President could not reduce any rate of duty to a rate less than 50 percent of the rate of duty applying on the date of enactment. Rates at or below 5 percent could be reduced to zero. Any duty reduction that exceeded 50 percent of an existing duty higher than 5 percent or any tariff increase had to be approved by Congress.

. . . .

Explanation of provision

Proclamation authority. Section 3(a) would provide the President the authority to proclaim, without Congressional approval, certain duty modifications in a manner very similar to the expired provision. Specifically, for rates that exceed 5 percent *ad valorem*, the President would not be authorized to reduce any rate of duty to a rate less than 50 percent of the rate of duty applying on the date of enactment. Rates at or below 5 percent *ad valorem* could be reduced to zero. Any duty reduction that exceeded 50 percent of an existing duty higher than 5 percent or any tariff increase would have to be approved by Congress. Staging authority would require that duty reductions on any article could not exceed 3 percent per year, or one-tenth of the total reduction, whichever is greater, except that staging would not be required if the International Trade Commission determined there is no U.S. production of that article.

These limitations would not apply to reciprocal agreements to eliminate or harmonize duties negotiated under the auspices of the World Trade Organization, such as so-called "zero-for-zero" negotiations.

. . . .

Reason for change

H.R. 3005, as amended, extends to the President the same authority to proclaim tariff modifications as under the 1988 Act. In addition, the President would be given authority to negotiate reciprocal duty eliminations on a sectoral basis within the WTO forum. The Committee believes that the Information Technology Agreement negotiated by the President under the auspices of the WTO to eliminate tariffs for information technology products all over the world was a substantial accomplishment. The Committee recognizes, however, that the President's ability to carry out such agreements is limited because section 111(b) of the Uruguay Round Agreements Act provides the President with proclamation authority applicable only to a limited number of sectors, that is those that were negotiated multilaterally under the WTO and that were the subject of negotiations on reciprocal duty elimination ("zero-for-zero") or harmonization during the Uruguay Round. Because of the success that the Information Technology Agreement promises for U.S. businesses and U.S. workers, the Committee wishes to provide authority for this and similar WTO sector-specific negotiations even if the sector had not been the subject of zero-for-zero negotiations during the Uruguay Round.

(continued...)

§ 2103(a)(3) **(3) AGGREGATE REDUCTION; EXEMPTION FROM STAGING.[215] —**

§ 2103(a)(3)(A) **(A) AGGREGATE REDUCTION. — Except as provided in subparagraph (B),[216] the aggregate reduction in the rate of duty on any article which is in effect on any day pursuant**

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[214](...continued)

Therefore, the purpose of this special tariff proclamation authority is to permit the U.S. Trade Representative to negotiate sector-specific tariff elimination or harmonization agreements at any time during the course of the next round of WTO trade negotiations scheduled for later this year. The emphasis should be on reaching concrete results as soon as possible. The Committee recognizes that other nations may be reluctant to make binding commitments early in the negotiations, on the theory that this reduces their bargaining leverage on other items later in the round. To prevent such concerns from slowing progress on near term tariff elimination agreements, the Committee intends that the special tariff proclamation authority could be used to negotiate provisional agreements which would allow for immediate tariff reductions, but make permanent duty elimination conditional on a final agreement in the new round. This would allow for near term benefits from tariff elimination, while preserving the ability of countries, including the United States, to condition the tariff cuts on a final comprehensive agreement on all subjects under negotiation in the new round.

While the Committee does not intend to limit the possible tariff elimination agreements that could be reached under this authority, it does wish to identify the following areas where it believes that tariff elimination negotiations should be focused before the conclusion of the round as a whole:

- Accelerated tariff elimination in those sectors where consensus can be achieved;
- Geographic expansion of the zero-for-zero tariff agreements reached in the Uruguay Round and in the Information Technology Agreement; and
- Geographic expansion of tariff harmonization agreements reached in the Uruguay Round.

H.R. 3005, as amended, would apply the same substantive and procedural requirements to all types of agreements, thus ending the special rules for bilateral versus multilateral agreements.

H.R. REP. NO. 107-249, at 36-39 (2002).

[215] "Staging" means implementing tariff changes by stages. *See infra* note 223, p. 177.

[216] *See infra* p. 177.

to a trade agreement entered into under paragraph (1)[217] shall not exceed the aggregate reduction which would have been in effect on such day if —

§ 2103(a)(3)(A)(i)

(i) a reduction of 3 percent ad valorem or a reduction of one-tenth of the total reduction, whichever is greater, had taken effect on the effective date of the first reduction proclaimed under paragraph (1)[218] to carry out such agreement with respect to such article; and

§2103(a)(3)(A)(ii)

(ii) a reduction equal to the amount applicable under clause (i)[219] had taken effect at 1-year intervals after the effective date of such first reduction.

§ 2103(a)(3)(B)

(B) EXEMPTION FROM STAGING.[220] — No staging is required under subparagraph (A)[221] with respect to a duty reduction that is proclaimed under paragraph (1)[222] for an article of a kind that is not produced in the United States. The United States International Trade Commission shall advise the President of the identity of articles that may be exempted from staging under this subparagraph.[223]

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[217] *See supra* p. 167.

[218] *See supra* p. 167.

[219] *See supra* p. 177.

[220] "Staging" means implementing tariff changes by stages. *See infra* note 223, p. 177.

[221] *See supra* p. 176.

[222] *See supra* p. 167.

[223] The joint statement of managers accompanying the conference report on the Trade Act of 2002 states with regard to staging:

Present/expired law

. . . .

(continued...)

[223](...continued)

Staging authority required that duty reductions on any article could not exceed 3 percent per year, or one-tenth of the total reduction, whichever is greater, except that staging was not required if the International Trade Commission determined there was no U.S. production of that article.

. . . .

House amendment

. . . .

Staging authority would require that duty reductions on any article could not exceed 3 percent per year, or one-tenth of the total reduction, whichever is greater, except that staging would not be required if the International Trade Commission determined there is no U.S. production of that article.

These limitations would not apply to reciprocal agreements to eliminate or harmonize duties negotiated under the auspices of the World Trade Organization, such as so-called "zero-for-zero" negotiations.

. . . .

Senate amendment

In most respects, section 2103 of the Senate Amendment is identical to section 2103 of the House Amendment. . . .

. . . .

Conference agreement

The Senate recedes to the House amendment with several modifications. . . .

H.R. REP. NO. 107-624, at 159-62 (2002).

The Senate Finance Committee report on the Trade Act of 2002 states with regard to staging:

To the extent that tariff reductions may be implemented by proclamation, the bill requires that, in general, such reductions take place in stages. The stages may vary in size from period to period. However, the aggregate reduction in place at any given time may not exceed the aggregate reduction that would have been in place if, beginning on the date an agreement is implemented, tariffs had been reduced in equal annual stages of the greater of (i) 3 percent ad valorem, or (ii) one-tenth of the total reduction. The bill permits the President to round numbers off, within limits, to simplify staging calculations.

An exception to the staging requirements is made where the U.S. International

(continued...)

§ 2103(a)(4) **(4) ROUNDING. — If the President determines that such action will simplify the computation of reductions under paragraph (3),[224] the President may round an annual reduction by an amount equal to the lesser of —**

§2103(a)(4)(A) **(A) the difference between the reduction without regard to this paragraph and the next lower whole number; or**

§ 2103(a)(4)(B) **(B) one-half of 1 percent ad valorem.**

§ 2103(a)(5) **(5) OTHER LIMITATIONS. — A rate of duty reduction that**

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[223](...continued)
Trade Commission determines that there is no domestic production of an article.

S. REP. NO. 107-139, at 41 (2002).

The House Ways and Means Committee report on the Trade Act of 2002 states with regard to staging:

Present/expired law

. . . .

Staging authority required that duty reductions on any article could not exceed 3 percent per year, or one-tenth of the total reduction, whichever is greater, except that staging was not required if the International Trade Commission determined there was no U.S. production of that article.

. . . .

Explanation of provision

. . . . Staging authority would require that duty reductions on any article could not exceed 3 percent per year, or one-tenth of the total reduction, whichever is greater, except that staging would not be required if the International Trade Commission determined there is no U.S. production of that article.

These limitations would not apply to reciprocal agreements to eliminate or harmonize duties negotiated under the auspices of the World Trade Organization, such as so-called "zero-for-zero" negotiations.

H.R. REP. NO. 107-249, at 36-37 (2002).

[224] *See supra* p. 176.

may not be proclaimed by reason of paragraph (2)[225] may take effect only if a provision authorizing such reduction is included within an implementing bill[226] provided for under section 2105[227] and that bill is enacted into law.

§ 2103(a)(6)

(6) OTHER TARIFF MODIFICATIONS. — Notwithstanding paragraphs (1)(B),[228] (2)(A),[229] (2)(C),[230] and (3)[231] through (5),[232] and subject to the consultation and layover requirements of section 115 of the Uruguay Round Agreements Act,[233] the President may proclaim the modification of any

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[225] *See supra* p. 172.

[226] For the purposes of this title, section 2103(b)(3)(A) (*see infra* p. 202) defines "implementing bill" to mean a bill that contains provisions (described in subparagraph 2103(b)(3)(B) (*see infra* p. 205)) approving or implementing a trade agreement entered into under section 2103(b) (*see infra* p. 185). Section 2103(b)(3)(A) (*see infra* p. 202) applies the trade authorities procedures of section 151 of the Trade Act of 1974 (*see supra* p. 47) to such an implementing bill.

[227] *See infra* p. 257.

[228] *See supra* p. 172.

[229] *See supra* p. 172.

[230] *See supra* p. 173.

[231] *See supra* p. 176.

[232] *See supra* p. 179.

[233] Section 115 of the Uruguay Round Agreements Act is codified as amended at 19 U.S.C. § 3524, and states:

SEC. 115. CONSULTATION AND LAYOVER REQUIREMENTS FOR, AND EFFECTIVE DATE OF, PROCLAIMED ACTIONS

If a provision of this Act provides that the implementation of an action by the President by proclamation is subject to the consultation and layover requirements of this section, such action may be proclaimed only if —

(1) the President has obtained advice regarding the proposed action from —

(A) the appropriate advisory committees established under section 135 of the

(continued...)

duty or staged rate reduction of any duty set forth in Schedule XX, as defined in section 2(5) of that Act,[234] if the United States agrees to such modification or staged rate reduction in a negotiation for the reciprocal elimination or harmonization of duties under the auspices of the World Trade Organization.

§2103(a)(7)

(7) AUTHORITY UNDER URUGUAY ROUND AGREEMENTS ACT NOT AFFECTED. — Nothing in this subsection shall limit the authority provided to the President under section 111(b) of the Uruguay Round Agreements Act (19 U.S.C. 3521(b)).[235]

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[233](...continued)
Trade Act of 1974 (19 U.S.C. 2155), and

(B) the International Trade Commission;

(2) the President has submitted a report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate that sets forth —

(A) the action proposed to be proclaimed and the reasons for such actions, and

(B) the advice obtained under paragraph (1);

(3) a period of 60 calendar days, beginning with the first day on which the President has met the requirements of paragraphs (1) and (2) with respect to such action, has expired; and

(4) the President has consulted with such committees regarding the proposed action during the period referred to in paragraph (3).

19 U.S.C. § 3524.

[234] Section 2(5) of the Uruguay Round Agreements Act is codified as amended at 19 U.S.C. § 3501(5), and states:

(5) Schedule XX. The term "Schedule XX" means Schedule XX — United States of America annexed to the Marrakesh Protocol to the GATT 1994.

19 U.S.C. § 3501(5).

[235] Section 111(b) of the Uruguay Round Agreements Act is codified as amended at 19 U.S.C. § 3521(b), and states:

(b) OTHER TARIFF MODIFICATIONS. — Subject to the consultation and layover
(continued...)

[235](...continued)
requirements of section 115 [19 U.S.C. § 3524], the President may proclaim —

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

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

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

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

19 U.S.C. § 3521(b).

The Senate Finance Committee report on the Trade Act of 2002 states with regard to the President's proclamation authority under the Uruguay Round Agreements Act:

Finally, the bill reaffirms the residual proclamation authority granted to the President in section 111(b) of the Uruguay Round Agreements Act ("URAA"). That provision authorizes the President to proclaim certain tariff rate changes for articles that were the subject of duty elimination or harmonization negotiations during the Uruguay Round of multilateral trade negotiations. During that round, the United States sought, but did not achieve, reciprocal duty elimination in the wood products, electronics, distilled spirits, non-ferrous metals, soda ash, and oilseeds and oilseed products sectors. In sectors where the United States did obtain agreement to reciprocal tariff elimination in the Uruguay Round — such as paper and paper products — the President determined, in the Statement of Administrative Action that accompanied the Uruguay Round Agreements Act, that the United States would pursue accelerated elimination of those tariffs following the Uruguay Round. Also, the President determined to continue to pursue harmonization of tariffs on chemical products following the Uruguay Round. Section 111(b) authorizes the President to proclaim tariff changes as necessary to implement each of the foregoing ends, and that authority remains unchanged under the present bill. See Uruguay Round Trade Agreements, Texts of Agreements, Implementing Bill, Statement of Administrative Action, and Required Supporting Statements, H. Doc. No. 316, 103d Cong., 2d Sess. at 701-02 (1994).

Since completion of the Uruguay Round, the President has exercised the residual proclamation authority under section 111(b) to implement U.S. obligations under the WTO Information Technology Agreement ("ITA"), which eliminates tariffs on a wide array of products, including computers, semiconductors and telecommunications equipment. The Committee believes that the ITA was a substantial accomplishment for an important sector of the U.S. economy. The Committee recognizes, however, that the President's ability to negotiate and carry out similar agreements is limited, because

(continued...)

[235](...continued)
section 111(b) applies only to sectors that were the subject of reciprocal duty elimination or harmonization negotiations during the Uruguay Round.

In the interest of building on the success of the ITA, the present bill (in section 3(a)(6)) grants the President authority to modify any duty or the staged rate reduction of any duty, pursuant to a reciprocal elimination or harmonization of duties under the auspices of the WTO, regardless of whether the sector at issue had been subject to duty elimination or harmonization negotiations during the Uruguay Round. This authority is not subject to the ordinary limitations on the scope of proclaimed tariff reductions, the prohibition on proclaimed tariff increases, and the staging rules. However, this authority may not be used to proclaim the reduction or elimination of tariffs on import-sensitive agricultural products as provided for in section 3(a)(2)(B).

Tariff reductions proclaimed under section 3(a)(6) of the present bill, like tariff reductions proclaimed under section 111(b) of the URAA, are subject to the layover and consultation requirements prescribed by section 115 of the URAA. That is, the President must receive advice from the appropriate industry advisory committee and the ITC on the proposed proclamation, and the proclamation must lie before the Senate Finance and House Ways and Means Committees for a period of 60 days before going into effect, in order to give the Committees an adequate opportunity to consult with the President.

It is the expectation of the Committee that the President will continue the efforts at tariff elimination and harmonization left over from the Uruguay Round, as well as efforts at accelerated tariff elimination in those sectors for which "zero-for-zero" agreements have been achieved. In addition, the Committee expects that the President will seek to expand the country and product coverage of existing tariff elimination agreements. Further, the Committee notes that new sectoral initiatives on tariff elimination which may be expected to yield significant benefits to the United States, based on volume of trade, include: electrical and non-electrical machinery, processed foods (such as soups and broths, sauces and biscuits, and snack foods), autos and auto parts, meats (such as beef, pork, and poultry), and information technology products not already covered by the ITA.

S. REP. NO. 107-139, at 41-42 (2002).

The House Ways and Means Committee report on the Trade Act of 2002 states with regard to the President's proclamation authority under the Uruguay Round Agreements Act:

Explanation of provision

Proclamation authority. Section 3(a) would provide the President the authority to proclaim, without Congressional approval, certain duty modifications in a manner very similar to the expired provision. Specifically, for rates that exceed 5 percent *ad valorem*, the President would not be authorized to reduce any rate of duty to a rate less than 50 percent of the rate of duty applying on the date of enactment. Rates at or below 5 percent *ad valorem* could be reduced to zero. Any duty reduction that exceeded 50

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percent of an existing duty higher than 5 percent or any tariff increase would have to be approved by Congress. Staging authority would require that duty reductions on any article could not exceed 3 percent per year, or one-tenth of the total reduction, whichever is greater, except that staging would not be required if the International Trade Commission determined there is no U.S. production of that article.

These limitations would not apply to reciprocal agreements to eliminate or harmonize duties negotiated under the auspices of the World Trade Organization, such as so-called "zero-for-zero" negotiations.

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Reason for change

H.R. 3005, as amended, extends to the President the same authority to proclaim tariff modifications as under the 1988 Act. In addition, the President would be given authority to negotiate reciprocal duty eliminations on a sectoral basis within the WTO forum. The Committee believes that the Information Technology Agreement negotiated by the President under the auspices of the WTO to eliminate tariffs for information technology products all over the world was a substantial accomplishment. The Committee recognizes, however, that the President's ability to carry out such agreements is limited because section 111(b) of the Uruguay Round Agreements Act provides the President with proclamation authority applicable only to a limited number of sectors, that is those that were negotiated multilaterally under the WTO and that were the subject of negotiations on reciprocal duty elimination ("zero-for-zero") or harmonization during the Uruguay Round. Because of the success that the Information Technology Agreement promises for U.S. businesses and U.S. workers, the Committee wishes to provide authority for this and similar WTO sector-specific negotiations even if the sector had not been the subject of zero-for-zero negotiations during the Uruguay Round.

Therefore, the purpose of this special tariff proclamation authority is to permit the U.S. Trade Representative to negotiate sector-specific tariff elimination or harmonization agreements at any time during the course of the next round of WTO trade negotiations scheduled for later this year. The emphasis should be on reaching concrete results as soon as possible. The Committee recognizes that other nations may be reluctant to make binding commitments early in the negotiations, on the theory that this reduces their bargaining leverage on other items later in the round. To prevent such concerns from slowing progress on near term tariff elimination agreements, the Committee intends that the special tariff proclamation authority could be used to negotiate provisional agreements which would allow for immediate tariff reductions, but make permanent duty elimination conditional on a final agreement in the new round. This would allow for near term benefits from tariff elimination, while preserving the ability of countries, including the United States, to condition the tariff cuts on a final comprehensive agreement on all subjects under negotiation in the new round.

While the Committee does not intend to limit the possible tariff elimination agreements that could be reached under this authority, it does wish to identify the

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§ 2103(b) **(b) AGREEMENTS REGARDING TARIFF AND NONTARIFF BARRIERS. —**

§ 2103(b)(1) **(1) IN GENERAL. —**

§ 2103(b)(1)(A) **(A) Whenever the President determines that —**

§ 2103(b)(1)(A)(i) **(i) one or more existing duties or any other import restriction of any foreign country or the United States or any other barrier to, or other distortion of, international trade unduly burdens or restricts the foreign trade of the United States or adversely affects the United States economy, or**

§ 2103(b)(1)(A)(ii) **(ii) the imposition of any such barrier or distortion is likely to result in such a burden, restriction, or effect, and that the purposes, policies, priorities, and objectives of this title will be promoted thereby, the President may enter into a trade agreement described in subpara-**

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[235](...continued)
following areas where it believes that tariff elimination negotiations should be focused before the conclusion of the round as a whole:

- Accelerated tariff elimination in those sectors where consensus can be achieved;

- Geographic expansion of the zero-for-zero tariff agreements reached in the Uruguay Round and in the Information Technology Agreement; and

- Geographic expansion of tariff harmonization agreements reached in the Uruguay Round.

H.R. 3005, as amended, would apply the same substantive and procedural requirements to all types of agreements, thus ending the special rules for bilateral versus multilateral agreements.

H.R. REP. NO. 107-249, at 37-39 (2002).

graph (B)[236] during the period described in subparagraph (C).[237]

§ 2103(b)(1)(B) **(B) The President may enter into a trade agreement under subparagraph (A)[238] with foreign countries providing for —**

§ 2103(b)(1)(B)(i) **(i) the reduction or elimination of a duty, restriction, barrier, or other distortion described in subparagraph (A);[239] or**

§ 2103(b)(1)(B)(ii) **(ii) the prohibition of, or limitation on the imposition of, such barrier or other distortion.[240]**

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[236] *See infra* p. 186.

[237] *See infra* p. 188.

[238] *See supra* p. 185.

[239] *See supra* p. 185.

[240] The joint statement of managers accompanying the conference report on the Trade Act of 2002 states with regard to agreements on tariff and non-tariff barriers:

Present/expired law

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Negotiation of multilateral non-tariff agreements. With respect to multilateral agreements, section 1102(b) of the 1988 Act provided that whenever the President determines that any barrier to, or other distortion of, international trade unduly burdens or restricts the foreign trade of the United States or adversely affects the U.S. economy, or the imposition of any such barrier or distortion is likely to result in such a burden, restriction, or effect, he may enter into a trade agreement with the foreign countries involved. The agreement must provide for the reduction or elimination of such barrier or other distortion or prohibit or limit the imposition of such a barrier or distortion.

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House amendment

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Agreements on tariff and non-tariff barriers. Section 2103(b)(1) would authorize the President to enter into a trade agreement with a foreign country whenever he determined that any duty or other import restriction or any other barrier to or distortion of international trade unduly burdens or restricts the foreign trade of the United States or adversely affects the U.S. economy, or the imposition of any such barrier or distortion is likely to result in such a burden, restriction, or effect. The agreement must provide for the reduction or elimination of such barrier or other distortion or prohibit or limit the imposition of such a barrier or distortion. No distinction would be made between bilateral and multilateral agreements.

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Senate amendment

In most respects, section 2103 of the Senate Amendment is identical to section 2103 of the House Amendment. . . .

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Conference agreement

The Senate recedes to the House amendment with several modifications.

H.R. REP. NO. 107-624, at 159-62 (2002).

The Senate Finance Committee report on the Trade Act of 2002 states with regard to agreements on tariff and non-tariff barriers:

Agreements on tariff and non-tariff barriers. The second procedure for implementing trade agreements is found in Section 3(b) and is commonly referred to as "trade authorities procedures" or "fast track." Section 3(b)(1) authorizes the President to enter into a trade agreement with a foreign country whenever he or she determines that any duty or other import restriction, or any other barrier to or distortion of international trade, unduly burdens or restricts the foreign trade of the United States or adversely affects the U.S. economy, or that the imposition of any such barrier or distortion is likely to result in such a burden, restriction, or effect, and that entering into such agreement will promote the purposes, policies, priorities and objectives of this bill. The agreement must provide for the reduction or elimination of such barrier or other distortion or prohibit or limit the imposition of such a barrier or distortion. Unlike prior fast track legislation, no distinction would be made between bilateral and multilateral agreements.

S. REP. NO. 107-139, at 42-43 (2002).

The House Ways and Means Committee report on the Trade Act of 2002 states with regard to agreements on tariff and non-tariff barriers:

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§ 2103(b)(1)(C) **(C) The President may enter into a trade agreement under this paragraph before —**

§ 2103(b)(1)(C)(i) **(i) July 1, 2005;[241] or**

§ 2103(b)(1)(C)(ii) **(ii) July 1, 2007,[242] if trade authorities procedures[243]**

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[240](...continued)
Present/expired law

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Negotiation of multilateral non-tariff agreements. With respect to multilateral agreements, section 1102(b) of the 1988 Act provided that whenever the President determines that any barrier to, or other distortion of, international trade unduly burdens or restricts the foreign trade of the United States or adversely affects the U.S. economy, or the imposition of any such barrier or distortion is likely to result in such a burden, restriction, or effect, he may enter into a trade agreement with the foreign countries involved. The agreement must provide for the reduction or elimination of such barrier or other distortion or prohibit or limit the imposition of such a barrier or distortion.

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Explanation of provision

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Agreements on tariff and non-tariff barriers. Section 3(b)(1) would authorize the President to enter into a trade agreement with a foreign country whenever he determined that any duty or other import restriction or any other barrier to or distortion of international trade unduly burdens or restricts the foreign trade of the United States or adversely affects the U.S. economy, or the imposition of any such barrier or distortion is likely to result in such a burden, restriction, or effect. The agreement must provide for the reduction or elimination of such barrier or other distortion or prohibit or limit the imposition of such a barrier or distortion. No distinction would be made between bilateral and multilateral agreements.

H.R. REP. NO. 107-249, at 37-38 (2002).

[241] Section 2004(a)(17)(B) of the Miscellaneous Trade and Technical Corrections Act of 2004, Pub. L. No. 108-429, 118 Stat. 2434, 2591 (Dec. 3, 2004), struck "June 1" and inserted "July 1" here.

[242] Section 2004(a)(17)(B) of the Miscellaneous Trade and Technical Corrections Act of 2004, Pub. L. No. 108-429, 118 Stat. 2434, 2591 (Dec. 3, 2004), struck "June 1" and inserted
(continued...)

are extended under subsection (c).[244]

§2103(b)(2) **(2) CONDITIONS. — A trade agreement may be entered into under this subsection only if such agreement makes progress in meeting the applicable objectives described in section 2102(a) and (b)**[245] **and the President satisfies the conditions set**

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[242](...continued)
"July 1" here.

[243] Section 2103(b)(3)(A) (*see infra* p. 202) defines "trade authorities procedures" to mean the provisions of section 151 of the Trade Act of 1974 (*see supra* p. 47).

[244] *See infra* p. 206.

[245] Section 2102(a) and (b) of the Trade Act of 2002 is codified at 19 U.S.C. § 3802(a) & (b), and states:

SEC. 2102. TRADE NEGOTIATING OBJECTIVES

(a) OVERALL TRADE NEGOTIATING OBJECTIVES. — The overall trade negotiating objectives of the United States for agreements subject to the provisions of section 2103 [19 U.S.C. § 3803] are —

(1) to obtain more open, equitable, and reciprocal market access;

(2) to obtain the reduction or elimination of barriers and distortions that are directly related to trade and that decrease market opportunities for United States exports or otherwise distort United States trade;

(3) to further strengthen the system of international trading disciplines and procedures, including dispute settlement;

(4) to foster economic growth, raise living standards, and promote full employment in the United States and to enhance the global economy;

(5) to ensure that trade and environmental policies are mutually supportive and to seek to protect and preserve the environment and enhance the international means of doing so, while optimizing the use of the world's resources;

(6) to promote respect for worker rights and the rights of children consistent with core labor standards of the ILO (as defined in section 2113(6) [19 U.S.C. § 3813(6)]) and an understanding of the relationship between trade and worker rights;

(7) to seek provisions in trade agreements under which parties to those agreements strive to ensure that they do not weaken or reduce the protections afforded in domestic environmental and labor laws as an encouragement for trade;

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(8) to ensure that trade agreements afford small businesses equal access to international markets, equitable trade benefits, and expanded export market opportunities, and provide for the reduction or elimination of trade barriers that disproportionately impact small businesses; and

(9) to promote universal ratification and full compliance with ILO Convention No. 182 Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor.

(b) PRINCIPAL TRADE NEGOTIATING OBJECTIVES. —

(1) TRADE BARRIERS AND DISTORTIONS. — The principal negotiating objectives of the United States regarding trade barriers and other trade distortions are —

(A) to expand competitive market opportunities for United States exports and to obtain fairer and more open conditions of trade by reducing or eliminating tariff and nontariff barriers and policies and practices of foreign governments directly related to trade that decrease market opportunities for United States exports or otherwise distort United States trade; and

(B) to obtain reciprocal tariff and nontariff barrier elimination agreements, with particular attention to those tariff categories covered in section 111(b) of the Uruguay Round Agreements Act (19 U.S.C. 3521(b)).

(2) TRADE IN SERVICES. — The principal negotiating objective of the United States regarding trade in services is to reduce or eliminate barriers to international trade in services, including regulatory and other barriers that deny national treatment and market access or unreasonably restrict the establishment or operations of service suppliers.

(3) FOREIGN INVESTMENT. — Recognizing that United States law on the whole provides a high level of protection for investment, consistent with or greater than the level required by international law, the principal negotiating objectives of the United States regarding foreign investment are to reduce or eliminate artificial or trade-distorting barriers to foreign investment, while ensuring that foreign investors in the United States are not accorded greater substantive rights with respect to investment protections than United States investors in the United States, and to secure for investors important rights comparable to those that would be available under United States legal principles and practice, by —

(A) reducing or eliminating exceptions to the principle of national treatment;

(B) freeing the transfer of funds relating to investments;

(C) reducing or eliminating performance requirements, forced technology transfers, and other unreasonable barriers to the establishment and operation

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of investments;

(D) seeking to establish standards for expropriation and compensation for expropriation, consistent with United States legal principles and practice;

(E) seeking to establish standards for fair and equitable treatment consistent with United States legal principles and practice, including the principle of due process;

(F) providing meaningful procedures for resolving investment disputes;

(G) seeking to improve mechanisms used to resolve disputes between an investor and a government through —

(i) mechanisms to eliminate frivolous claims and to deter the filing of frivolous claims;

(ii) procedures to ensure the efficient selection of arbitrators and the expeditious disposition of claims;

(iii) procedures to enhance opportunities for public input into the formulation of government positions; and

(iv) providing for an appellate body or similar mechanism to provide coherence to the interpretations of investment provisions in trade agreements; and

(H) ensuring the fullest measure of transparency in the dispute settlement mechanism, to the extent consistent with the need to protect information that is classified or business confidential, by —

(i) ensuring that all requests for dispute settlement are promptly made public;

(ii) ensuring that —

(I) all proceedings, submissions, findings, and decisions are promptly made public; and

(II) all hearings are open to the public; and

(iii) establishing a mechanism for acceptance of amicus curiae submissions from businesses, unions, and nongovernmental organizations.

(4) INTELLECTUAL PROPERTY. — The principal negotiating objectives of the United States regarding trade-related intellectual property are —

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(A) to further promote adequate and effective protection of intellectual property rights, including through —

(i) (I) ensuring accelerated and full implementation of the Agreement on Trade-Related Aspects of Intellectual Property Rights referred to in section 101(d)(15) of the Uruguay Round Agreements Act (19 U.S.C. 3511(d)(15)), particularly with respect to meeting enforcement obligations under that agreement; and

(II) ensuring that the provisions of any multilateral or bilateral trade agreement governing intellectual property rights that is entered into by the United States reflect a standard of protection similar to that found in United States law;

(ii) providing strong protection for new and emerging technologies and new methods of transmitting and distributing products embodying intellectual property;

(iii) preventing or eliminating discrimination with respect to matters affecting the availability, acquisition, scope, maintenance, use, and enforcement of intellectual property rights;

(iv) ensuring that standards of protection and enforcement keep pace with technological developments, and in particular ensuring that rightholders have the legal and technological means to control the use of their works through the Internet and other global communication media, and to prevent the unauthorized use of their works; and

(v) providing strong enforcement of intellectual property rights, including through accessible, expeditious, and effective civil, administrative, and criminal enforcement mechanisms;

(B) to secure fair, equitable, and nondiscriminatory market access opportunities for United States persons that rely upon intellectual property protection; and

(C) to respect the Declaration on the TRIPS Agreement and Public Health, adopted by the World Trade Organization at the Fourth Ministerial Conference at Doha, Qatar on November 14, 2001.

(5) TRANSPARENCY. — The principal negotiating objective of the United States with respect to transparency is to obtain wider and broader application of the principle of transparency through —

(A) increased and more timely public access to information regarding trade issues and the activities of international trade institutions;

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(B) increased openness at the WTO and other international trade fora by increasing public access to appropriate meetings, proceedings, and submissions, including with regard to dispute settlement and investment; and

(C) increased and more timely public access to all notifications and supporting documentation submitted by parties to the WTO.

(6) ANTI-CORRUPTION. — The principal negotiating objectives of the United States with respect to the use of money or other things of value to influence acts, decisions, or omissions of foreign governments or officials or to secure any improper advantage in a manner affecting trade are —

(A) to obtain high standards and appropriate domestic enforcement mechanisms applicable to persons from all countries participating in the applicable trade agreement that prohibit such attempts to influence acts, decisions, or omissions of foreign governments; and

(B) to ensure that such standards do not place United States persons at a competitive disadvantage in international trade.

(7) IMPROVEMENT OF THE WTO AND MULTILATERAL TRADE AGREEMENTS. — The principal negotiating objectives of the United States regarding the improvement of the World Trade Organization, the Uruguay Round Agreements, and other multilateral and bilateral trade agreements are —

(A) to achieve full implementation and extend the coverage of the World Trade Organization and such agreements to products, sectors, and conditions of trade not adequately covered; and

(B) to expand country participation in and enhancement of the Information Technology Agreement and other trade agreements.

(8) REGULATORY PRACTICES. — The principal negotiating objectives of the United States regarding the use of government regulation or other practices by foreign governments to provide a competitive advantage to their domestic producers, service providers, or investors and thereby reduce market access for United States goods, services, and investments are —

(A) to achieve increased transparency and opportunity for the participation of affected parties in the development of regulations;

(B) to require that proposed regulations be based on sound science, cost-benefit analysis, risk assessment, or other objective evidence;

(C) to establish consultative mechanisms among parties to trade agreements to promote increased transparency in developing guidelines, rules, regulations, and laws for government procurement and other regulatory

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regimes; and

(D) to achieve the elimination of government measures such as price controls and reference pricing which deny full market access for United States products.

(9) ELECTRONIC COMMERCE. — The principal negotiating objectives of the United States with respect to electronic commerce are —

(A) to ensure that current obligations, rules, disciplines, and commitments under the World Trade Organization apply to electronic commerce;

(B) to ensure that —

(i) electronically delivered goods and services receive no less favorable treatment under trade rules and commitments than like products delivered in physical form; and

(ii) the classification of such goods and services ensures the most liberal trade treatment possible;

(C) to ensure that governments refrain from implementing trade-related measures that impede electronic commerce;

(D) where legitimate policy objectives require domestic regulations that affect electronic commerce, to obtain commitments that any such regulations are the least restrictive on trade, nondiscriminatory, and transparent, and promote an open market environment; and

(E) to extend the moratorium of the World Trade Organization on duties on electronic transmissions.

(10) RECIPROCAL TRADE IN AGRICULTURE. —

(A) The principal negotiating objective of the United States with respect to agriculture is to obtain competitive opportunities for United States exports of agricultural commodities in foreign markets substantially equivalent to the competitive opportunities afforded foreign exports in United States markets and to achieve fairer and more open conditions of trade in bulk, specialty crop, and value-added commodities by —

(i) reducing or eliminating, by a date certain, tariffs or other charges that decrease market opportunities for United States exports —

(I) giving priority to those products that are subject to significantly higher tariffs or subsidy regimes of major producing countries; and

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(II) providing reasonable adjustment periods for United States import-sensitive products, in close consultation with the Congress on such products before initiating tariff reduction negotiations;

(ii) reducing tariffs to levels that are the same as or lower than those in the United States;

(iii) reducing or eliminating subsidies that decrease market opportunities for United States exports or unfairly distort agriculture markets to the detriment of the United States;

(iv) allowing the preservation of programs that support family farms and rural communities but do not distort trade;

(v) developing disciplines for domestic support programs, so that production that is in excess of domestic food security needs is sold at world prices;

(vi) eliminating government policies that create price-depressing surpluses;

(vii) eliminating state trading enterprises whenever possible;

(viii) developing, strengthening, and clarifying rules and effective dispute settlement mechanisms to eliminate practices that unfairly decrease United States market access opportunities or distort agricultural markets to the detriment of the United States, particularly with respect to import-sensitive products, including —

(I) unfair or trade-distorting activities of state trading enterprises and other administrative mechanisms, with emphasis on requiring price transparency in the operation of state trading enterprises and such other mechanisms in order to end cross subsidization, price discrimination, and price undercutting;

(II) unjustified trade restrictions or commercial requirements, such as labeling, that affect new technologies, including biotechnology;

(III) unjustified sanitary or phytosanitary restrictions, including those not based on scientific principles in contravention of the Uruguay Round Agreements;

(IV) other unjustified technical barriers to trade; and

(V) restrictive rules in the administration of tariff rate quotas;

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(ix) eliminating practices that adversely affect trade in perishable or cyclical products, while improving import relief mechanisms to recognize the unique characteristics of perishable and cyclical agriculture;

(x) ensuring that import relief mechanisms for perishable and cyclical agriculture are as accessible and timely to growers in the United States as those mechanisms that are used by other countries;

(xi) taking into account whether a party to the negotiations has failed to adhere to the provisions of already existing trade agreements with the United States or has circumvented obligations under those agreements;

(xii) taking into account whether a product is subject to market distortions by reason of a failure of a major producing country to adhere to the provisions of already existing trade agreements with the United States or by the circumvention by that country of its obligations under those agreements;

(xiii) otherwise ensuring that countries that accede to the World Trade Organization have made meaningful market liberalization commitments in agriculture;

(xiv) taking into account the impact that agreements covering agriculture to which the United States is a party, including the North American Free Trade Agreement, have on the United States agricultural industry;

(xv) maintaining bona fide food assistance programs and preserving United States market development and export credit programs; and

(xvi) striving to complete a general multilateral round in the World Trade Organization by January 1, 2005, and seeking the broadest market access possible in multilateral, regional, and bilateral negotiations, recognizing the effect that simultaneous sets of negotiations may have on United States import-sensitive commodities (including those subject to tariff-rate quotas).

(B) (i) Before commencing negotiations with respect to agriculture, the United States Trade Representative, in consultation with the Congress, shall seek to develop a position on the treatment of seasonal and perishable agricultural products to be employed in the negotiations in order to develop an international consensus on the treatment of seasonal or perishable agricultural products in investigations relating to dumping and safeguards and in any other relevant area.

(ii) During any negotiations on agricultural subsidies, the United States Trade Representative shall seek to establish the common base year for

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calculating the Aggregated Measurement of Support (as defined in the Agreement on Agriculture) as the end of each country's Uruguay Round implementation period, as reported in each country's Uruguay Round market access schedule.

(iii) The negotiating objective provided in subparagraph (A) applies with respect to agricultural matters to be addressed in any trade agreement entered into under section 2103(a) or (b), including any trade agreement entered into under section 2103(a) or (b) that provides for accession to a trade agreement to which the United States is already a party, such as the North American Free Trade Agreement and the United States-Canada Free Trade Agreement.

(11) LABOR AND THE ENVIRONMENT. — The principal negotiating objectives of the United States with respect to labor and the environment are —

(A) to ensure that a party to a trade agreement with the United States does not fail to effectively enforce its environmental or labor laws, through a sustained or recurring course of action or inaction, in a manner affecting trade between the United States and that party after entry into force of a trade agreement between those countries;

(B) to recognize that parties to a trade agreement retain the right to exercise discretion with respect to investigatory, prosecutorial, regulatory, and compliance matters and to make decisions regarding the allocation of resources to enforcement with respect to other labor or environmental matters determined to have higher priorities, and to recognize that a country is effectively enforcing its laws if a course of action or inaction reflects a reasonable exercise of such discretion, or results from a bona fide decision regarding the allocation of resources, and no retaliation may be authorized based on the exercise of these rights or the right to establish domestic labor standards and levels of environmental protection;

(C) to strengthen the capacity of United States trading partners to promote respect for core labor standards (as defined in section 2113(6) [19 U.S.C. § 3813(6)]);

(D) to strengthen the capacity of United States trading partners to protect the environment through the promotion of sustainable development;

(E) to reduce or eliminate government practices or policies that unduly threaten sustainable development;

(F) to seek market access, through the elimination of tariffs and nontariff barriers, for United States environmental technologies, goods, and services; and

(G) to ensure that labor, environmental, health, or safety policies and

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practices of the parties to trade agreements with the United States do not arbitrarily or unjustifiably discriminate against United States exports or serve as disguised barriers to trade.

(12) DISPUTE SETTLEMENT AND ENFORCEMENT. — The principal negotiating objectives of the United States with respect to dispute settlement and enforcement of trade agreements are —

(A) to seek provisions in trade agreements providing for resolution of disputes between governments under those trade agreements in an effective, timely, transparent, equitable, and reasoned manner, requiring determinations based on facts and the principles of the agreements, with the goal of increasing compliance with the agreements;

(B) to seek to strengthen the capacity of the Trade Policy Review Mechanism of the World Trade Organization to review compliance with commitments;

(C) to seek adherence by panels convened under the Dispute Settlement Understanding and by the Appellate Body to the standard of review applicable under the Uruguay Round Agreement involved in the dispute, including greater deference, where appropriate, to the fact-finding and technical expertise of national investigating authorities;

(D) to seek provisions encouraging the early identification and settlement of disputes through consultation;

(E) to seek provisions to encourage the provision of trade-expanding compensation if a party to a dispute under the agreement does not come into compliance with its obligations under the agreement;

(F) to seek provisions to impose a penalty upon a party to a dispute under the agreement that —

(i) encourages compliance with the obligations of the agreement;

(ii) is appropriate to the parties, nature, subject matter, and scope of the violation; and

(iii) has the aim of not adversely affecting parties or interests not party to the dispute while maintaining the effectiveness of the enforcement mechanism; and

(G) to seek provisions that treat United States principal negotiating objectives equally with respect to —

(i) the ability to resort to dispute settlement under the applicable

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forth in section 2104.[246]

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agreement;

(ii) the availability of equivalent dispute settlement procedures; and

(iii) the availability of equivalent remedies.

(13) WTO EXTENDED NEGOTIATIONS. — The principal negotiating objectives of the United States regarding trade in civil aircraft are those set forth in section 135(c) of the Uruguay Round Agreements Act (19 U.S.C. 3355(c)) and regarding rules of origin are the conclusion of an agreement described in section 132 of that Act (19 U.S.C. 3552).

(14) TRADE REMEDY LAWS. — The principal negotiating objectives of the United States with respect to trade remedy laws are —

(A) to preserve the ability of the United States to enforce rigorously its trade laws, including the antidumping, countervailing duty, and safeguard laws, and avoid agreements that lessen the effectiveness of domestic and international disciplines on unfair trade, especially dumping and subsidies, or that lessen the effectiveness of domestic and international safeguard provisions, in order to ensure that United States workers, agricultural producers, and firms can compete fully on fair terms and enjoy the benefits of reciprocal trade concessions; and

(B) to address and remedy market distortions that lead to dumping and subsidization, including overcapacity, cartelization, and market-access barriers.

(15) BORDER TAXES. — The principal negotiating objective of the United States regarding border taxes is to obtain a revision of the WTO rules with respect to the treatment of border adjustments for internal taxes to redress the disadvantage to countries relying primarily on direct taxes for revenue rather than indirect taxes.

(16) TEXTILE NEGOTIATIONS. — The principal negotiating objectives of the United States with respect to trade in textiles and apparel articles are to obtain competitive opportunities for United States exports of textiles and apparel in foreign markets substantially equivalent to the competitive opportunities afforded foreign exports in United States markets and to achieve fairer and more open conditions of trade in textiles and apparel.

(17) WORST FORMS OF CHILD LABOR. — The principal negotiating objective of the United States with respect to the trade-related aspects of the worst forms of child labor are to seek commitments by parties to trade agreements to vigorously enforce their own laws prohibiting the worst forms of child labor.

19 U.S.C. § 3802(a) & (b).

[246] For section 2104, see *infra* p. 223.

The joint statement of managers accompanying the conference report on the Trade Act of 2002 states with regard to the conditions for entering into trade agreements under this section:

Present/expired law

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Negotiation of bilateral agreements. Section 1102(c) of the 1988 Act set forth three requirements for the negotiation of a bilateral agreement:

The foreign country must request the negotiation of the bilateral agreement;

The agreement must make progress in meeting applicable U.S. trade negotiating objectives; and

The President must provide written notice of the negotiations to the Committee on Ways and Means and the Committee on Finance of the Senate and consult with these committees.

The negotiations could proceed unless either Committee disapproved the negotiations within 60 days prior to the 90 calendar days advance notice required of entry into an agreement (described below).

. . . .

House amendment

. . . .

Conditions. Section 2103(b)(2) would provide that the special implementing bills procedures may be used only if the agreement makes progress in meeting the applicable objectives set forth in section 2102(a) and (b) and the President satisfies the consultation requirements set forth in section 2104.

. . . .

Senate amendment

In most respects, section 2103 of the Senate Amendment is identical to section 2103 of the House Amendment. . . .

. . . .

Conference agreement

The Senate recedes to the House amendment with several modifications.

(continued...)

[246](...continued)
H.R. REP. NO. 107-624, at 159-62 (2002).

The Senate Finance Committee report on the Trade Act of 2002 states with regard to the conditions for entering into trade agreements under this section:

> *Conditions.* Section 3(b)(2) provides that the trade agreement approval procedures may be used only if the agreement makes progress in meeting the applicable objectives set forth in sections 2 (a) and (b) (Overall and Principal Trade Negotiating Objectives), and the President satisfies the requirements set forth in section 4 (Consultations).

S. REP. NO. 107-139, at 43 (2002).

The House Ways and Means Committee report on the Trade Act of 2002 states with regard to the conditions for entering into trade agreements under this section:

Present/expired law

. . . .

Negotiation of bilateral agreements. Section 1102(c) of the 1988 Act set forth three requirements for the negotiation of a bilateral agreement:

- The foreign country must request the negotiation of the bilateral agreement;
- The agreement must make progress in meeting applicable U.S. trade negotiating objectives; and
- The President must provide written notice of the negotiations to the Committee on Ways and Means and the Committee on Finance of the Senate and consult with these committees.

The negotiations could proceed unless either Committee disapproved the negotiations within 60 days prior to the 90 calendar days advance notice required of entry into an agreement (described below).

. . . .

Explanation of provision

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Conditions. Section 3(b)(2) would provide that the special implementing bills procedures may be used only if the agreement makes progress in meeting the applicable objectives set forth in section 2 (a) and (b) and the President satisfies the consultation requirements set forth in section 4.

(continued...)

§ 2103(b)(3) **(3) BILLS QUALIFYING FOR TRADE AUTHORITIES PROCEDURES. —**

§ 2103(b)(3)(A) **(A) The provisions of section 151 of the Trade Act of 1974[247] (in this title referred to as "trade authorities procedures") apply to a bill of either House of Congress which contains provisions described in subparagraph (B)[248] to the same extent as such section 151 applies to implementing bills[249] under that section. A bill to which this paragraph applies shall hereafter in this title be referred to as an "implementing bill".[250]**

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[246](...continued)
H.R. REP. NO. 107-249, at 36-38 (2002).

[247] *See supra* p. 47.

[248] *See infra* p. 205.

[249] Section 151(b)(1) of the Trade Act of 1974 defines "implementing bill." *See supra* p. 60.

[250] The joint statement of managers accompanying the conference report on the Trade Act of 2002 states with regard to qualifying for fast-track procedures:

Present/expired law

. . . .

Provisions qualifying for fast track procedures. Section 1103(b)(1)(A) of the 1988 Act provided that fast track apply to implementing bills submitted with respect to any trade agreements entered into under the statute. Section 151(b)(1) of the Trade Act of 1974 further defined "implementing bill" as a bill containing provisions "necessary or appropriate" to implement the trade agreement, as well as provisions approving the agreement and the statement of administrative action.

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House amendment

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Bills qualifying for trade authorities procedures. Section 2103(b)(3)(A) would
(continued...)

[250](...continued)
provide that bills implementing trade agreements may qualify for trade promotion authority TPA procedures only if those bills consist solely of the following provisions:

Provisions approving the trade agreement and statement of administrative action; and

Provisions necessary or appropriate to implement the trade agreement.

. . . .

Senate amendment

In most respects, section 2103 of the Senate Amendment is identical to section 2103 of the House Amendment. However, there are several key differences, as follows:

. . . .

The Senate Amendment contains a provision making a trade agreement implementing bill ineligible for "fast track" procedures if the bill modifies, amends, or requires modification or amendment to certain trade remedy laws. A bill that does modify, amend or require modification or amendment to those laws is subject to a point of order in the Senate, which may be waived by a majority vote.

. . . .

Conference agreement

The Senate recedes to the House amendment with several modifications.

H.R. REP. NO. 107-624, at 159-62 (2002).

The Senate Finance Committee report on the Trade Act of 2002 states with regard to qualifying for fast-track procedures:

Bills qualifying for trade authorities procedures. Section 3(b)(3) provides that bills implementing trade agreements qualify for trade authorities procedures only if those bills consist solely of provisions approving the trade agreement and any statement of administrative action accompanying the agreement, and provisions necessary or appropriate to implement the trade agreement.

If the foregoing conditions are met, then the trade authorities procedures described in section 151 of the Trade Act of 1974 apply to the implementing bill. Section 151 of that Act sets forth a timetable for consideration of implementing bills in the Committees of jurisdiction and on the floor of each House of Congress. Ordinarily, the maximum time for consideration in both Chambers will be 90 legislative days. Section 151 also prohibits amendments to implementing bills and limits the time for debate on the floor of each House to 20 hours (subject to further limitation).

(continued...)

[250](...continued)

The Committee intends to extend authority to the President to negotiate agreements subject to the trade authorities procedures similar to that given to past Presidents. The Committee also intends to provide the President with the flexibility needed to negotiate strong trade agreements. However, the Committee believes that for constitutional reasons, it is important to make trade promotion authority as tailored as possible, so as not to unnecessarily intrude on normal legislative procedures. Trade authorities procedures are exceptions to the ordinary rules of procedure, which are permitted only because of the co-equal status that the executive and legislative branches share in the area of trade. The President and Congress both have important powers with respect to trade and foreign affairs issues. Therefore, trade agreements do not readily fit the legislative model used to consider other types of legislation. Trade authorities procedures assure that trade relations with other countries are handled expeditiously and efficiently, with the involvement of the executive and legislative branches. The Committee believes that these procedures should apply only to meet the special requirements of trade agreements. Further, the trade authorities procedures should apply only to those provisions in an implementing bill that are strictly necessary or appropriate to implement the underlying agreement. To apply the procedures more broadly would encroach on Congress's constitutional authority to legislate. The Committee takes a strict interpretation of this requirement.

S. REP. NO. 107-139, at 43 (2002).

The House Ways and Means Committee report on the Trade Act of 2002 states with regard to qualifying for fast-track procedures:

Present/expired law

. . . .

Provisions qualifying for fast track procedures. Section 1103(b)(1)(A) of the 1988 Act provided that fast track apply to implementing bills submitted with respect to any trade agreements entered into under the statute. Section 151(b)(1) of the Trade Act of 1974 further defined "implementing bill" as a bill containing provisions "necessary or appropriate" to implement the trade agreement, as well as provisions approving the agreement and the statement of administrative action.

. . . .

Explanation of provision

. . . .

Bills qualifying for trade authorities procedures. Section 3(b)(3)(A) would provide that bills implementing trade agreements may qualify for trade promotion authority TPA procedures only if those bills consist solely of the following provisions:

- Provisions approving the trade agreement and statement of administrative

(continued...)

§ 2103(b)(3)(B)

(B) The provisions referred to in subparagraph (A)[251] are —

[250](...continued)
action; and

- Provisions necessary or appropriate to implement the trade agreement.

. . . .

Reason for change

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With respect to the requirements for bills qualifying for trade promotion authority, it is the Committee's intent to extend authority to the President to negotiate agreements that would be subject to the special procedures similar to that given to past Administrations.

The Committee believes that for historical and constitutional reasons, it is important to make trade promotion authority as tailored as possible so as not to unnecessarily intrude on normal legislative procedures. Trade promotion authority is an exception to the rule that is permitted only because of the recognition of the compelling need to consider quickly and efficiently legislation to implement trade agreements. The President and the Congress both have important powers with respect to trade and foreign affairs issues. Therefore, trade agreements do not readily fit the legislative model used to consider other types of legislation. Trade promotion authority has been developed to assure that trade relations with other countries are handled expeditiously and efficiently with the involvement of the executive and legislative branches. In so doing, the Committee has always recognized that this authority should apply only to meet the special requirements of trade agreements. To apply the authority more broadly would usurp a broad range of Congressional authority and prerogatives to make laws in these areas.

Moreover, the Committee believes that every attempt should be made to use TPA only for those provisions in the implementing bill that are strictly necessary or appropriate to implement the agreement. The Committee takes a strict interpretation of this language. Specifically, the Committee emphasizes that trade promotion authority, particularly section 103(b)(3)(C), should not apply to proposals to make wholesale changes to U.S. law merely because those laws may be addressed in the agreement. The Committee has been concerned that a number of provisions that were not related to implementing the trade agreement at hand have been included in past implementing bills.

H.R. REP. NO. 107-249, at 36-40 (2002).

[251] *See supra* p. 202.

§ 2103(b)(3)(B)(i) **(i) a provision approving a trade agreement entered into under this subsection and approving the statement of administrative action, if any, proposed to implement such trade agreement; and**

§ 2103(b)(3)(B)(ii) **(ii) if changes in existing laws or new statutory authority are required to implement such trade agreement or agreements, provisions, necessary or appropriate to implement such trade agreement or agreements, either repealing or amending existing laws or providing new statutory authority.**

§ 2103(c) **(c) EXTENSION DISAPPROVAL PROCESS FOR CONGRESSIONAL TRADE AUTHORITIES PROCEDURES.[252] —**

§ 2103(c)(1) **(1) IN GENERAL. — Except as provided in section 2105(b)[253] —**

§ 2103(c)(1)(A) **(A) the trade authorities procedures[254] apply to implementing bills[255] submitted with respect to trade agreements entered into under subsection (b)[256] before July 1, 2005; and**

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[252] Section 2103(b)(3)(A) (*see supra* p. 202) defines "trade authorities procedures" to mean the provisions of section 151 of the Trade Act of 1974 (*see supra* p. 47).

[253] *See infra* p. 271.

[254] Section 2103(b)(3)(A) (*see supra* p. 202) defines "trade authorities procedures" to mean the provisions of section 151 of the Trade Act of 1974 (*see supra* p. 47).

[255] For the purposes of this title, section 2103(b)(3)(A) (*see supra* p. 202) defines "implementing bill" to mean a bill that contains provisions (described in subparagraph 2103(b)(3)(B) (*see supra* p. 205)) approving or implementing a trade agreement entered into under section 2103(b) (*see supra* p. 185). Section 2103(b)(3)(A) (*see supra* p. 202) applies the trade authorities procedures of section 151 of the Trade Act of 1974 (*see supra* p. 47) to such an implementing bill.

[256] *See supra* 185.

§ 2103(c)(1)(B) **(B) the trade authorities procedures[257] shall be extended to implementing bills[258] submitted with respect to trade agreements entered into under subsection (b)[259] after June 30, 2005, and before July 1, 2007, if (and only if) —**

§ 2103(c)(1)(B)(i) **(i) the President requests[260] such extension under paragraph (2);[261] and**

§ 2103(c)(1)(B)(ii) **(ii) neither House of the Congress adopts an extension disapproval resolution[262] under paragraph (5)[263] before July 1, 2005.[264]**

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[257] Section 2103(b)(3)(A) (*see supra* p. 202) defines "trade authorities procedures" to mean the provisions of section 151 of the Trade Act of 1974 (*see supra* p. 47).

[258] For the purposes of this title, section 2103(b)(3)(A) (*see supra* p. 202) defines "implementing bill" to mean a bill that contains provisions (described in subparagraph 2103(b)(3)(B) (*see supra* p. 205)) approving or implementing a trade agreement entered into under section 2103(b) (*see supra* p. 185). Section 2103(b)(3)(A) (*see supra* p. 202) applies the trade authorities procedures of section 151 of the Trade Act of 1974 (*see supra* p. 47) to such an implementing bill.

[259] *See supra* p. 185.

[260] The President requested such an extension on March 30, 2005. *See* Letter from the President to the Speaker of the House of Representatives and the President of the Senate (Mar. 30, 2005) <http://www.whitehouse.gov/news/releases/2005/03/20050330-5.html>; U.S. Trade Representative, Administration Requests Extension of Trade Promotion Authority (Mar. 30, 2005) <http://www.ustr.gov/Document_Library/Press_Releases/2005/March/Administration_Requests_Extension_of_Trade_Promotion_Authority.html?ht=authority>.

[261] *See infra* p. 208.

[262] Section 2103(c)(5)(A) defines "extension disapproval resolution." *See infra* p. 218.

[263] *See infra* p. 218.

[264] Section 2004(a)(17)(C)(i) of the Miscellaneous Trade and Technical Corrections Act of 2004, Pub. L. No. 108-429, 118 Stat. 2434, 2591 (Dec. 3, 2004), struck "June 1" and inserted "July 1" here.

On April 4, 2005, Senator Byron Dorgan (for himself and Senator Robert C. Byrd) submitted S. Res. 100, 109th Cong. (2005), an extension disapproval resolution, which the Presiding Officer referred to the Committee on Finance. 151 CONG. REC. S3317 (daily ed. Apr. 4, 2005). The

(continued...)

§ 2103(c)(2)

(2) REPORT TO CONGRESS BY THE PRESIDENT. — If the President is of the opinion that the trade authorities procedures[265] should be extended to implementing bills[266] described

[264](...continued)
Committee on Finance took no action on the resolution before July 1, and thus the trade authorities procedures were extended by virtue of this section.

The Senate Finance Committee report on the Trade Act of 2002 states with regard to extension procedures:

> *Extension procedures.* Section 3(c) outlines a process for extending the tariff proclamation authority of section 3(a) and the trade authorities procedures of section 3(b). Under this process, the President must request the extension from Congress and provide his reasons for that request, along with an explanation of the trade agreements for which he expects to need fast track authority, and a description of the progress he has made to date toward achieving the purposes, policies, priorities, and objectives of the present bill. The President must promptly notify an extension request to the Advisory Committee for Trade Policy and Negotiations established under section 135 of the Trade Act of 1974, which then must file its own report with Congress. The President also must promptly notify the International Trade Commission of his request for an extension. The International Trade Commission must file a report that contains a review and analysis of the economic impact on the United States of all trade agreements implemented between the date of enactment of this bill and the date upon which the President requests an extension.
>
> Consistent with prior law, the President's request for an extension through June 1, 2007 will be granted, unless either House of Congress passes a "resolution of disapproval." Any Member of Congress may introduce such a resolution in his or her respective House of Congress. Such a resolution will be referred, in the Senate, to the Committee on Finance, and in the House, jointly to the Committees on Rules and Ways and Means. Floor action on such a resolution will not be in order unless the resolution is reported by the aforementioned committees. In the event the Committee on Finance reports an extension disapproval resolution, the resolution will be considered on the Senate floor under the fast track procedures set forth in section 152(e) of the Trade Act of 1974. In the event the Committee on Ways and Means and the Committee on Rules report an extension disapproval resolution, the resolution will be considered on the House floor under the fast track procedures set forth in section 152(d) of that Act.

S. REP. NO. 107-139, at 44 (2002).

[265] Section 2103(b)(3)(A) (*see supra* p. 202) defines "trade authorities procedures" to mean the provisions of section 151 of the Trade Act of 1974 (*see supra* p. 47).

[266] For the purposes of this title, section 2103(b)(3)(A) (*see supra* p. 202) defines "implementing bill" to mean a bill that contains provisions (described in subparagraph 2103(b)(3)(B) (*see supra* p. 205)) approving or implementing a trade agreement entered into
(continued...)

in paragraph (1)(B),[267] the President shall submit to the Congress, not later than April 1, 2005,[268] a written report[269] that contains a request for such extension, together with —

§ 2103(c)(2)(A) **(A) a description of all trade agreements that have been negotiated under subsection (b)[270] and the anticipated schedule for submitting such agreements to the Congress for approval;**

§ 2103(c)(2)(B) **(B) a description of the progress that has been made in negotiations to achieve the purposes, policies, priorities, and objectives of this title, and a statement that such progress justifies the continuation of negotiations; and**

§ 2103(c)(2)(C) **(C) a statement of the reasons why the extension is needed to complete the negotiations.**

§ 2103(c)(3) **(3) OTHER REPORTS TO CONGRESS. —**

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[266](...continued)
under section 2103(b) (*see supra* p. 185). Section 2103(b)(3)(A) (*see supra* p. 202) applies the trade authorities procedures of section 151 of the Trade Act of 1974 (*see supra* p. 47) to such an implementing bill.

[267] *See supra* p. 207.

[268] Section 2004(a)(17)(C)(ii) of the Miscellaneous Trade and Technical Corrections Act of 2004, Pub. L. No. 108-429, 118 Stat. 2434, 2591 (Dec. 3, 2004), struck "March 1" and inserted "April 1" here.

[269] The President submitted the report pursuant to this paragraph on March 30, 2005. *See* Letter from the President to the Speaker of the House of Representatives and the President of the Senate (Mar. 30, 2005) <http://www.whitehouse.gov/news/releases/2005/03/20050330-5.html>; REPORT TO THE CONGRESS ON THE EXTENSION OF TRADE PROMOTION AUTHORITY; CONSISTENT WITH SECTION 2103(C)(2) OF THE TRADE ACT OF 2002 (Mar. 30, 2005) <http://www.ustr.gov/assets/Document_Library/Reports_Publications/2005/2005_TPA_Report/asset_upload_file433_7513.pdf>; U.S. Trade Representative, Administration Requests Extension of Trade Promotion Authority (Mar. 30, 2005) <http://www.ustr.gov/Document_Library/Press_Releases/2005/March/Administration_Requests_Extension_of_Trade_Promotion_Authority.html?ht=authority>.

[270] *See supra* p. 185.

§ 2103(c)(3)(A)

(A) REPORT BY THE ADVISORY COMMITTEE. — The President shall promptly inform the Advisory Committee for Trade Policy and Negotiations established under section 135 of the Trade Act of 1974 (19 U.S.C. 2155)[271] of

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[271] Section 135 of the Trade Act of 1974 is codified as amended at 19 U.S.C. § 2155, and states:

SEC. 135. INFORMATION AND ADVICE FROM PRIVATE AND PUBLIC SECTORS

(a) IN GENERAL. —

(1) The President shall seek information and advice from representative elements of the private sector and the non-Federal governmental sector with respect to —

(A) negotiating objectives and bargaining positions before entering into a trade agreement under this title [19 U.S.C. §§ 2111 et seq.] or section 2103 of the Bipartisan Trade Promotion Authority Act of 2002 [19 U.S.C. § 3803];

(B) the operation of any trade agreement once entered into, including preparation for dispute settlement panel proceedings to which the United States is a party; and

(C) other matters arising in connection with the development, implementation, and administration of the trade policy of the United States, including those matters referred to in Reorganization Plan Number 3 of 1979 and Executive Order Numbered 12188 [19 U.S.C. § 2171 notes], and the priorities for actions thereunder.

To the maximum extent feasible, such information and advice on negotiating objectives shall be sought and considered before the commencement of negotiations.

(2) The President shall consult with representative elements of the private sector and the non-Federal governmental sector on the overall current trade policy of the United States. The consultations shall include, but are not limited to, the following elements of such policy:

(A) The principal multilateral and bilateral trade negotiating objectives and the progress being made toward their achievement.

(B) The implementation, operation, and effectiveness of recently concluded multilateral and bilateral trade agreements and resolution of trade disputes.

(C) The actions taken under the trade laws of the United States and the

(continued...)

[271](...continued)

effectiveness of such actions in achieving trade policy objectives.

(D) Important developments in other areas of trade for which there must be developed a proper policy response.

(3) The President shall take the advice received through consultation under paragraph (2) into account in determining the importance which should be placed on each major objective and negotiating position that should be adopted in order to achieve the overall trade policy of the United States.

(b) ADVISORY COMMITTEE FOR TRADE POLICY AND NEGOTIATIONS. —

(1) The President shall establish an Advisory Committee for Trade Policy and Negotiations to provide overall policy advice on matters referred to in subsection (a). The committee shall be composed of not more than 45 individuals and shall include representatives of non-Federal governments, labor, industry, agriculture, small business, service industries, retailers, nongovernmental environmental and conservation organizations, and consumer interests. The committee shall be broadly representative of the key sectors and groups of the economy, particularly with respect to those sectors and groups which are affected by trade. Members of the committee shall be recommended by the United States Trade Representative and appointed by the President for a term of 2 years. An individual may be reappointed to committee for any number of terms. Appointments to the Committee shall be made without regard to political affiliation.

(2) The committee shall meet as needed at the call of the United States Trade Representative or at the call of two-thirds of the members of the committee. The chairman of the committee shall be elected by the committee from among its members.

(3) The United States Trade Representative shall make available to the committee such staff, information, personnel, and administrative services and assistance as it may reasonably require to carry out its activities.

(c) GENERAL POLICY, SECTORAL, OR FUNCTIONAL ADVISORY COMMITTEES. —

(1) The President may establish individual general policy advisory committees for industry, labor, agriculture, services, investment, defense, and other interests, as appropriate, to provide general policy advice on matters referred to in subsection (a). Such committees shall, insofar as is practicable, be representative of all industry, labor, agricultural, service, investment, defense, and other interests, respectively, including small business interests, and shall be organized by the United States Trade Representative and the Secretaries of Commerce, Defense, Labor, Agriculture, the Treasury, or other executive departments, as appropriate. The members of such committees shall be appointed by the United States Trade Representative in consultation with such Secretaries.

(continued...)

[271](...continued)

(2) The President shall establish such sectoral or functional advisory committees as may be appropriate. Such committees shall, insofar as is practicable, be representative of all industry, labor, agricultural, or service interests (including small business interests) in the sector or functional areas concerned. In organizing such committees, the United States Trade Representative and the Secretaries of Commerce, Labor, Agriculture, the Treasury, or other executive departments, as appropriate, shall —

(A) consult with interested private organizations; and

(B) take into account such factors as —

(i) patterns of actual and potential competition between United States industry and agriculture and foreign enterprise in international trade,

(ii) the character of the nontariff barriers and other distortions affecting such competition,

(iii) the necessity for reasonable limits on the number of such advisory committees,

(iv) the necessity that each committee be reasonably limited in size, and

(v) in the case of each sectoral committee, that the product lines covered by each committee be reasonably related.

(3) The President —

(A) may, if necessary, establish policy advisory committees representing non-Federal governmental interests to provide policy advice —

(i) on matters referred to in subsection (a), and

(ii) with respect to implementation of trade agreements, and

(B) shall include as members of committees established under subparagraph (A) representatives of non-Federal governmental interests if he finds such inclusion appropriate after consultation by the United States Trade Representative with such representatives.

(4) Appointments to each committee established under paragraph (1), (2), or (3) shall be made without regard to political affiliation.

(d) POLICY, TECHNICAL, AND OTHER ADVICE AND INFORMATION. — Committees established under subsection (c) shall meet at the call of the United States Trade Representative and the Secretaries of Agriculture, Commerce, Labor, Defense, or other

(continued...)

[271](...continued)
executive departments, as appropriate, to provide policy advice, technical advice and information, and advice on other factors relevant to the matters referred to in subsection (a).

(e) MEETING OF ADVISORY COMMITTEES AT CONCLUSION OF NEGOTIATIONS. —

(1) The Advisory Committee for Trade Policy and Negotiations, each appropriate policy advisory committee, and each sectoral or functional advisory committee, if the sector or area which such committee represents is affected, shall meet at the conclusion of negotiations for each trade agreement entered into under section 2103 of the Bipartisan Trade Promotion Authority Act of 2002 [19 U.S.C. § 3803], to provide to the President, to Congress, and to the United States Trade Representative a report on such agreement. Each report that applies to a trade agreement entered into under section 2103 of the Bipartisan Trade Promotion Authority Act of 2002 [19 U.S.C. § 3803] shall be provided under the preceding sentence not later than the date on which the President notifies the Congress under section 2105(a)(1)(A) of the Bipartisan Trade Promotion Authority Act of 2002 [19 U.S.C. § 3805(a)(1)(A)] of his intention to enter into that agreement.

(2) The report of the Advisory Committee for Trade Policy and Negotiations and each appropriate policy advisory committee shall include an advisory opinion as to whether and to what extent the agreement promotes the economic interests of the United States and achieves the applicable overall and principal negotiating objectives set forth in section 2102 of the Bipartisan Trade Promotion Authority Act of 2002 [19 U.S.C. § 3802], as appropriate.

(3) The report of the appropriate sectoral or functional committee under paragraph (1) shall include an advisory opinion as to whether the agreement provides for equity and reciprocity within the sector or within the functional area.

(f) APPLICATION OF FEDERAL ADVISORY COMMITTEE ACT. — The provisions of the Federal Advisory Committee Act apply —

(1) to the Advisory Committee for Trade Policy and Negotiations established under subsection (b); and

(2) to all other advisory committees which may be established under subsection (c); except that the meetings of advisory committees established under subsections (b) and (c) shall be exempt from the requirements of subsections (a) and (b) of sections 10 and 11 of the Federal Advisory Committee Act [5 U.S.C. Appx. §§ 10, 11] (relating to open meetings, public notice, public participation, and public availability of documents), whenever and to the extent it is determined by the President or his designee that such meetings will be concerned with matters the disclosure of which would seriously compromise the development by the United States Government of trade policy, priorities, negotiating objectives or bargaining positions with respect to matters referred to in subsection (a), and that meetings may be called of such special task forces, plenary meetings of chairmen, or other

(continued...)

[271](...continued)

such groups made up of members of the committees established under subsections (b) and (c).

(g) TRADE SECRETS AND CONFIDENTIAL INFORMATION. —

(1) Trade secrets and commercial or financial information which is privileged or confidential, and which is submitted in confidence by the private sector or non-Federal government to officers or employees of the United States in connection with trade negotiations, may be disclosed upon request to —

(A) officers and employees of the United States designated by the United States Trade Representative;

(B) members of the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate who are designated as official advisers under section 161(a)(1) [19 U.S.C. § 2211(a)(1)] or are designated by the chairmen of either such committee under section 161(b)(3)(A) [19 U.S.C. § 2211(b)(3)(A)] and staff members of either such committee designated by the chairmen under section 161(b)(3)(A) [19 U.S.C. § 2211(b)(3)(A)]; and

(C) members of any committee of the House or Senate or any joint committee of Congress who are designated as advisers under section 161(a)(2) [19 U.S.C. § 2211(a)(2)] or designated by the chairman of such committee under section 161(b)(3)(B) [19 U.S.C. § 2211(b)(3)(B)] and staff members of such committee designated under section 161(b)(3)(B) [19 U.S.C. § 2211(b)(3)(B)], but disclosure may be made under this subparagraph only with respect to trade secrets or commercial or financial information that is relevant to trade policy matters or negotiations that are within the legislative jurisdiction of such committee; for use in connection with matters referred to in subsection (a).

(2) Information other than that described in paragraph (1), and advice submitted in confidence by the private sector or non-Federal government to officers or employees of the United States, to the Advisory Committee for Trade Policy and Negotiations, or to any advisory committee established under subsection (c), in connection with matters referred to in subsection (a), may be disclosed upon request to —

(A) the individuals described in paragraph (1); and

(B) the appropriate advisory committee established under this section.

(3) Information submitted in confidence by officers or employees of the United States to the Advisory Committee for Trade Policy and Negotiations, or to any advisory committee established under subsection (c), may be disclosed in accordance with rules issued by the United States Trade Representative and the

(continued...)

[271](...continued)

Secretaries of Commerce, Labor, Defense, Agriculture, or other executive departments, as appropriate, after consultation with the relevant advisory committees established under subsection (c). Such rules shall define the categories of information which require restricted or confidential handling by such committee considering the extent to which public disclosure of such information can reasonably be expected to prejudice the development of trade policy, priorities, or United States negotiating objectives. Such rules shall, to the maximum extent feasible, permit meaningful consultations by advisory committee members with persons affected by matters referred to in subsection (a).

(h) ADVISORY COMMITTEE SUPPORT. — The United States Trade Representative, and the Secretaries of Commerce, Labor, Defense, Agriculture, the Treasury, or other executive departments, as appropriate, shall provide such staff, information, personnel, and administrative services and assistance to advisory committees established under subsection (c) as such committees may reasonably require to carry out their activities.

(i) CONSULTATION WITH ADVISORY COMMITTEES; PROCEDURES; NONACCEPTANCE OF COMMITTEE ADVICE OR RECOMMENDATIONS. — It shall be the responsibility of the United States Trade Representative, in conjunction with the Secretaries of Commerce, Labor, Agriculture, the Treasury, or other executive departments, as appropriate, to adopt procedures for consultation with and obtaining information and advice from the advisory committees established under subsection (c) on a continuing and timely basis. Such consultation shall include the provision of information to each advisory committee as to —

(1) significant issues and developments; and

(2) overall negotiating objectives and positions of the United States and other parties; with respect to matters referred to in subsection (a). The United States Trade Representative shall not be bound by the advice or recommendations of such advisory committees, but shall inform the advisory committees of significant departures from such advice or recommendations made. In addition, in the course of consultations with the Congress under this title, information on the advice and information provided by advisory committees shall be made available to congressional advisers.

(j) PRIVATE ORGANIZATIONS OR GROUPS. — In addition to any advisory committee established under this section, the President shall provide adequate, timely and continuing opportunity for the submission on an informal basis (and, if such information is submitted under the provisions of subsection (g), on a confidential basis) by private organizations or groups, representing government, labor, industry, agriculture, small business, service industries, consumer interests, and others, of statistics, data and other trade information, as well as policy recommendations, pertinent to any matter referred to in subsection (a).

(k) SCOPE OF PARTICIPATION BY MEMBERS OF ADVISORY COMMITTEES. — Nothing contained in this section shall be construed to authorize or permit any individual to

(continued...)

the President's decision to submit a report to the Congress under paragraph (2).[272] The Advisory Committee shall submit to the Congress as soon as practicable, but not later than June 1, 2005,[273] a written report that contains —

§ 2103(c)(3)(A)(i) **(i) its views regarding the progress that has been made in negotiations to achieve the purposes, policies, priorities, and objectives of this title; and**

§ 2103(c)(3)(A)(ii) **(ii) a statement of its views, and the reasons therefor, regarding whether the extension requested under paragraph (2)[274] should be approved or disapproved.**

§ 2103(c)(3)(B) **(B) REPORT BY ITC. — The President shall promptly**

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[271](...continued)
participate directly in any negotiation of any matters referred to in subsection (a). To the maximum extent practicable, the members of the committees established under subsections (b) and (c), and other appropriate parties, shall be informed and consulted before and during any such negotiations. They may be designated as advisors to a negotiating delegation, and may be permitted to participate in international meetings to the extent the head of the United States delegation deems appropriate. However, they may not speak or negotiate for the United States.

(l) ADVISORY COMMITTEES ESTABLISHED BY DEPARTMENT OF AGRICULTURE. — The provisions of title XVIII of the Food and Agriculture Act of 1977 (7 U.S.C. 2281 et seq.) shall not apply to any advisory committee established under subsection (c).

(m) "NON-FEDERAL GOVERNMENT" DEFINED. — As used in this section, the term "non-Federal government" means —

(1) any State, territory, or possession of the United States, or the District of Columbia, or any political subdivision thereof; or

(2) any agency or instrumentality of any entity described in paragraph (1).

19 U.S.C. § 2155.

[272] *See supra* p. 208.

[273] Section 2004(a)(17)(C)(iii) of the Miscellaneous Trade and Technical Corrections Act of 2004, Pub. L. No. 108-429, 118 Stat. 2434, 2591 (Dec. 3, 2004), struck "May 1" and inserted "June 1" here.

[274] *See supra* p. 208.

inform the International Trade Commission of the President's decision to submit a report to the Congress under paragraph (2).[275] The International Trade Commission shall submit to the Congress as soon as practicable, but not later than June 1, 2005,[276] a written report that contains a review and analysis of the economic impact on the United States of all trade agreements implemented between the date of enactment of this Act[277] and the date on which the President decides to seek an extension requested under paragraph (2).[278]

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[275] *See supra* p. 208.

[276] Section 2004(a)(17)(C)(iii) of the Miscellaneous Trade and Technical Corrections Act of 2004, Pub. L. No. 108-429, 118 Stat. 2434, 2591 (Dec. 3, 2004), struck "May 1" and inserted "June 1" here.

[277] Aug. 6, 2002.

[278] For paragraph (2), see *supra* p. 208.

The joint statement of managers accompanying the conference report on the Trade Act of 2002 states with regard to the ITC report:

Senate amendment

. . . .

The Senate Amendment requires the U.S. International Trade Commission to submit a report to Congress on negotiations during the initial period for which the President is granted trade promotion authority. This report would be made in connection with a request by the President to have such authority extended.

Conference agreement

. . . .

The Conferees agree to section 2103(c)(3)(B) of the Senate amendment, which requires the ITC to submit a report to Congress by May 1, 2005 (if the President seeks extension of TPA until June 2, 2007) analyzing the economic impact on the United States of all trade agreements implemented between enactment and the extension request.

H.R. REP. NO. 107-624, at 161-62 (2002).

§ 2103(c)(4) **(4) STATUS OF REPORTS. — The reports submitted to the Congress under paragraphs (2)[279] and (3),[280] or any portion of such reports, may be classified to the extent the President determines appropriate.**

§ 2103(c)(5) **(5) EXTENSION DISAPPROVAL RESOLUTIONS. —**

§ 2103(c)(5)(A) **(A) For purposes of paragraph (1),[281] the term "extension disapproval resolution" means a resolution of either House of the Congress, the sole matter after the resolving clause of which is as follows: "That the _____ disapproves the request of the President for the extension, under section 2103(c)(1)(B)(i) of the Bipartisan Trade Promotion Authority Act of 2002,[282] of the trade authorities procedures[283] under that Act to any implementing bill[284] submitted with respect to any trade agreement entered into under section 2103(b)[285] of that Act after June 30, 2005.", with the blank space being filled with the name of the resolving**

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[279] *See supra* p. 208.

[280] *See supra* p. 208.

[281] *See supra* p. 206.

[282] *See supra* p. 207.

[283] Section 2103(b)(3)(A) (*see supra* p. 202) defines "trade authorities procedures" to mean the provisions of section 151 of the Trade Act of 1974 (*see supra* p. 47).

[284] For the purposes of this title, section 2103(b)(3)(A) (*see supra* p. 202) defines "implementing bill" to mean a bill that contains provisions (described in subparagraph 2103(b)(3)(B) (*see supra* p. 205)) approving or implementing a trade agreement entered into under section 2103(b) (*see supra* p. 185). Section 2103(b)(3)(A) (*see supra* p. 202) applies the trade authorities procedures of section 151 of the Trade Act of 1974 (*see supra* p. 47) to such an implementing bill.

[285] Section 2103(b) addresses "Agreements Regarding Tariff and Nontariff Barriers." *See supra* p. 185.

House of the Congress.[286]

§ 2103(c)(5)(B) **(B) EXTENSION DISAPPROVAL RESOLUTIONS —**

§ 2103(c)(5)(B)(i) **(i) may be introduced in either House of the Congress by any member of such House; and**

§ 2103(c)(5)(B)(ii) **(ii) shall be referred, in the House of Representatives, to the Committee on Ways and Means and, in addition, to the Committee on Rules.**

§ 2103(c)(5)(C) **(C) The provisions of section 152(d)[287] and (e)[288] of the Trade Act of 1974 (19 U.S.C. 2192(d) and (e)) (relating to the floor consideration of certain resolutions in the House and Senate) apply to extension disapproval resolutions.**

§ 2103(c)(5)(D) **(D) It is not in order for —**

§ 2103(c)(5)(D)(i) **(i) the Senate to consider any extension disapproval resolution not reported by the Committee on Finance;**

§ 2103(c)(5)(D)(ii) **(ii) the House of Representatives to consider any extension disapproval resolution not reported by the Committee on Ways and Means and, in addition, by the Committee on Rules; or**

§ 2103(c)(5)(D)(iii) **(iii) either House of the Congress to consider an**

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[286] Pursuant to this paragraph, on April 4, 2005, Senator Byron Dorgan (for himself and Senator Robert C. Byrd) submitted S. Res. 100, 109th Cong. (2005), which the Presiding Officer referred to the Committee on Finance. 151 CONG. REC. S3317 (daily ed. Apr. 4, 2005). The Committee on Finance took no action on the resolution.

[287] *See supra* p. 140.

[288] *See supra* p. 142.

extension disapproval resolution after June 30, 2005.[289]

§ 2103(d) **(d) COMMENCEMENT OF NEGOTIATIONS. — In order to contribute to the continued economic expansion of the United States, the President shall commence negotiations covering tariff and nontariff barriers affecting any industry, product, or service sector, and expand existing sectoral agreements to countries that are not parties to those agreements, in cases where the President determines that such negotiations are feasible and timely and would benefit the United States. Such sectors include agriculture, commercial services, intellectual property rights, industrial and capital goods, government procurement, information**

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[289] The Senate Finance Committee report on the Trade Act of 2002 states with regard to extension procedures:

> *Extension procedures.* Section 3(c) outlines a process for extending the tariff proclamation authority of section 3(a) and the trade authorities procedures of section 3(b). Under this process, the President must request the extension from Congress and provide his reasons for that request, along with an explanation of the trade agreements for which he expects to need fast track authority, and a description of the progress he has made to date toward achieving the purposes, policies, priorities, and objectives of the present bill. The President must promptly notify an extension request to the Advisory Committee for Trade Policy and Negotiations established under section 135 of the Trade Act of 1974, which then must file its own report with Congress. The President also must promptly notify the International Trade Commission of his request for an extension. The International Trade Commission must file a report that contains a review and analysis of the economic impact on the United States of all trade agreements implemented between the date of enactment of this bill and the date upon which the President requests an extension.
>
> Consistent with prior law, the President's request for an extension through June 1, 2007 will be granted, unless either House of Congress passes a "resolution of disapproval." Any Member of Congress may introduce such a resolution in his or her respective House of Congress. Such a resolution will be referred, in the Senate, to the Committee on Finance, and in the House, jointly to the Committees on Rules and Ways and Means. Floor action on such a resolution will not be in order unless the resolution is reported by the aforementioned committees. In the event the Committee on Finance reports an extension disapproval resolution, the resolution will be considered on the Senate floor under the fast track procedures set forth in section 152(e) of the Trade Act of 1974. In the event the Committee on Ways and Means and the Committee on Rules report an extension disapproval resolution, the resolution will be considered on the House floor under the fast track procedures set forth in section 152(d) of that Act.

S. REP. NO. 107-139, at 44 (2002).

technology products, environmental technology and services, medical equipment and services, civil aircraft, and infrastructure products. In so doing, the President shall take into account all of the principal negotiating objectives set forth in section 2102(b).[290]

[290] *See supra* note 245, p. 190.

§2104

SEC. 2104. CONSULTATIONS AND ASSESSMENT

§ 2104(a)

(a) NOTICE AND CONSULTATION BEFORE NEGOTIATION. — The President, with respect to any agreement that is subject to the provisions of section 2103(b),[291] shall —

§ 2104(a)(1)

(1) provide, at least 90 calendar days before initiating negotiations, written notice to the Congress of the President's intention to enter into the negotiations and set forth therein the date the President intends to initiate such negotiations, the specific United States objectives for the negotiations, and whether the President intends to seek an agreement, or changes to an existing agreement;

§ 2104(a)(2)

(2) before and after submission of the notice, consult regarding the negotiations with the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives, such other committees of the House and Senate as the President deems appropriate, and the Congressional Oversight group convened under section 2107;[292]

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[291] Section 2103(b) addresses "Agreements Regarding Tariff and Nontariff Barriers." *See supra* p. 185.

[292] Section 2107 is codified as amended at 19 U.S.C. § 3807, and states:

SEC. 2107. CONGRESSIONAL OVERSIGHT GROUP

(a) MEMBERS AND FUNCTIONS. —

(1) IN GENERAL. — By not later than 60 days after the date of the enactment of this Act [Aug. 6, 2002], and not later than 30 days after the convening of each Congress, the chairman of the Committee on Ways and Means of the House of Representatives and the chairman of the Committee on Finance of the Senate shall convene the Congressional Oversight Group.

(2) MEMBERSHIP FROM THE HOUSE. — In each Congress, the Congressional Oversight Group shall be comprised of the following Members of the House of Representatives:

(continued...)

[292](...continued)

(A) The chairman and ranking member of the Committee on Ways and Means, and 3 additional members of such Committee (not more than 2 of whom are members of the same political party).

(B) The chairman and ranking member, or their designees, of the committees of the House of Representatives which would have, under the Rules of the House of Representatives, jurisdiction over provisions of law affected by a trade agreement negotiations for which are conducted at any time during that Congress and to which this title would apply.

(3) MEMBERSHIP FROM THE SENATE. — In each Congress, the Congressional Oversight Group shall also be comprised of the following members of the Senate:

(A) The chairman and ranking member of the Committee on Finance and 3 additional members of such Committee (not more than 2 of whom are members of the same political party).

(B) The chairman and ranking member, or their designees, of the committees of the Senate which would have, under the Rules of the Senate, jurisdiction over provisions of law affected by a trade agreement negotiations for which are conducted at any time during that Congress and to which this title would apply.

(4) ACCREDITATION. — Each member of the Congressional Oversight Group described in paragraph (2)(A) and (3)(A) shall be accredited by the United States Trade Representative on behalf of the President as an official adviser to the United States delegation in negotiations for any trade agreement to which this title applies. Each member of the Congressional Oversight Group described in paragraph (2)(B) and (3)(B) shall be accredited by the United States Trade Representative on behalf of the President as an official adviser to the United States delegation in the negotiations by reason of which the member is in the Congressional Oversight Group. The Congressional Oversight Group shall consult with and provide advice to the Trade Representative regarding the formulation of specific objectives, negotiating strategies and positions, the development of the applicable trade agreement, and compliance and enforcement of the negotiated commitments under the trade agreement.

(5) CHAIR. — The Congressional Oversight Group shall be chaired by the Chairman of the Committee on Ways and Means of the House of Representatives and the Chairman of the Committee on Finance of the Senate.

(b) GUIDELINES. —

(1) PURPOSE AND REVISION. — The United States Trade Representative, in consultation with the chairmen and ranking minority members of the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate —

(continued...)

and

§ 2104(a)(3) **(3) upon the request of a majority of the members of the Congressional Oversight Group under section 2107(c),[293] meet with the Congressional Oversight Group before initiating the**

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[292](...continued)

(A) shall, within 120 days after the date of the enactment of this Act [enacted Aug. 6, 2002], develop written guidelines to facilitate the useful and timely exchange of information between the Trade Representative and the Congressional Oversight Group convened under this section; and

(B) may make such revisions to the guidelines as may be necessary from time to time.

(2) CONTENT. — The guidelines developed under paragraph (1) shall provide for, among other things —

(A) regular, detailed briefings of the Congressional Oversight Group regarding negotiating objectives, including the promotion of certain priorities referred to in section 2102(c) [19 U.S.C. § 3802(c)], and positions and the status of the applicable negotiations, beginning as soon as practicable after the Congressional Oversight Group is convened, with more frequent briefings as trade negotiations enter the final stage;

(B) access by members of the Congressional Oversight Group, and staff with proper security clearances, to pertinent documents relating to the negotiations, including classified materials;

(C) the closest practicable coordination between the Trade Representative and the Congressional Oversight Group at all critical periods during the negotiations, including at negotiation sites;

(D) after the applicable trade agreement is concluded, consultation regarding ongoing compliance and enforcement of negotiated commitments under the trade agreement; and

(E) the time frame for submitting the report required under section 2102(c)(8) [19 U.S.C. § 3802(c)(8)].

(c) REQUEST FOR MEETING. — Upon the request of a majority of the Congressional Oversight Group, the President shall meet with the Congressional Oversight Group before initiating negotiations with respect to a trade agreement, or at any other time concerning the negotiations.

19 U.S.C. § 3807.

[293] *See supra* note 292.

negotiations or at any other time concerning the negotiations.[294]

[294] The joint statement of managers accompanying the conference report on the Trade Act of 2002 states with regard to consultations generally:

SEC. 2104 — CONSULTATIONS AND ASSESSMENT

Present/expired law

Section 102 of the Trade Act of 1974 and sections 1102(d) and 1103 of the 1988 Act set forth the fast track requirements. These provisions required the President, before entering into any trade agreement, to consult with Congress as to the nature of the agreement, how and to what extent the agreement will achieve applicable purposes, policies, and objectives, and all matters relating to agreement implementation. In addition, before entering into an agreement, the President was required to give Congress at least 90 calendar days advance notice of his intent. The purpose of this period was to provide the Congressional Committees of jurisdiction an opportunity to review the proposed agreement before it was signed.

. . . .

House amendment

Section 2104 of the House amendment to H.R. 3009 would establish a number of requirements that the President consult with Congress. Specifically, section 2104(a)(1) would require the President to provide written notice and consult with the relevant committees at least 90 calendar days prior to entering into negotiations. Section 2104(a)(c) also provides that President shall meet with the Congressional Oversight Group established under section 2107 upon a request of a majority of its members. Trade promotion authority would not apply to an implementing bill if both Houses separately agree to a procedural disapproval resolution within any 60-day period stating that the Administration has failed to notify or consult with Congress.

. . . .

Senate amendment

The Senate Amendment is substantially similar to the House bill . . . .

. . . .

Conference agreement

The Senate recedes to the House with several modifications.

H.R. REP. NO. 107-624, at 162-65 (2002).

(continued...)

[294](...continued)

The Senate Finance Committee report on the Trade Act of 2002 states with regard to consultations generally:

Section 4. Consultations and assessment

H.R. 3005 revises and strengthens the legislative-executive trade consultation procedures. To this end, section 4 establishes a number of new requirements to help ensure close coordination and consultation at every stage of trade agreement negotiation.

Specifically, section 4(a)(1) requires the President to provide written notice to Congress at least 90 calendar days prior to entering into negotiations. In the notice, the President must set forth the date on which he intends to initiate negotiations, the specific objectives for the negotiations, and whether the President intends to seek a new agreement, or to change an existing agreement. Failure to provide notice may trigger the introduction and consideration of a "procedural disapproval resolution" under the provisions of section 5(b). If a disapproval resolution were adopted, it would withdraw trade authorities procedures for legislation implementing the agreement at issue. Section 4(a)(2) requires the President to consult with relevant Committees regarding the negotiations before and after formal submission of the notice of intention to negotiate. Section 4(a)(3) requires the President, upon the request of a majority of the members of the Congressional Oversight Group (an entity established in section 7 of this bill), to meet with the Congressional Oversight Group before initiating negotiations or at any other time concerning the negotiations.

. . . .

The Committee believes that strong legislative-executive consultations are the key to successful trade negotiations undertaken under the authorities provided in this bill. A strong consultation procedure, effectively utilized by both branches of government, can help build broad political support for trade agreements negotiated under this bill. Conversely, failure to adhere to the consultation procedures erodes trust between the executive and legislative branches and could lead to withdrawal of trade agreement approval procedures or rejection of trade agreements.

The improvements made with respect to consultations, as compared with previous fast track legislation, are designed to assure maximum congressional participation before, during, and after the trade negotiating process. Given Congress's constitutional role in trade policy, it is imperative that Members and their staffs be given periodic and timely substantive briefings by U.S. negotiators and access to relevant documents and information sources. To this end, the Committee expects that the USTR will, consistent with past practice, commit to a set of procedures for supplying Members and properly cleared staff with relevant documents, whether classified or unclassified, on a timely basis.

It is equally important that congressional trade advisers — those named under section 161 of the Trade Act of 1974, as well as Members of the Congressional Oversight Group established under section 7 of the present bill — be given appropriate

(continued...)

[294](...continued)
access to international conferences, meetings, and negotiating sessions relating to trade agreements. The Committee notes that under both section 161(a)(1) of the Trade Act of 1974 and section 7(a)(4) of the present bill, certain Members of Congress are to be accredited by the U.S. Trade Representative on behalf of the President as official advisers to the U.S. delegation in trade agreement negotiations. While these Members will not be negotiating on behalf of the United States, access to the negotiations as observers is critical to enabling the Members, in their capacity as official advisers, to provide timely input to the U.S. negotiators.

The Committee is of the view that meaningful consultations entail an ongoing dialogue between the legislative and executive branches. The burden on the executive branch is not simply to keep Committees of jurisdiction and other congressional advisers informed. Negotiators also must solicit and take into account input from Congress. To the extent that negotiators take positions that differ from the input provided by Committees of jurisdiction and other congressional advisers, it is generally expected that they will explain the divergences to the Committees and other advisers in a timely manner.

Moreover, while the obligations to consult under the present bill generally are placed on the President and the U.S. Trade Representative, the Committee recognizes that it may be appropriate for other executive branch officials to consult on particular matters. For example, the Committee expects that the Secretary of the Treasury or his designee will consult with the Committees of jurisdiction and other congressional advisers on matters regarding trade and monetary policy. Similarly, the Committee expects that the Secretary of Agriculture or her designee will consult on matters regarding trade and agriculture. Likewise, the Committee expects that where other matters that are the subject of trade negotiations come within the jurisdiction of departments and agencies other than the Office of the U.S. Trade Representative, the appropriate executive branch personnel will consult with Congress.

The Committee emphasizes that Congress must be fully involved in all phases of the negotiating process and must have the ability to fully express its views and fulfill its constitutional role. The Committee intends that throughout the process, the consultations address the nature of the agreement in question, how and to what extent the agreement will achieve the applicable purposes, policies, and objectives set forth in H.R. 3005, as amended, and all matters relating to implementation under section 5, including the effects of the agreement on U.S. laws.

It is the Committee's view that comprehensive, detailed consultations are especially important toward the conclusion of a negotiation — the point at which key, and often controversial, matters are resolved. Accordingly, it is the Committee's expectation that the U.S. Trade Representative will work with the Committees of jurisdiction and other congressional trade advisers to develop a set of procedures for consultations as negotiations enter their final days. Members will then have the opportunity to provide the USTR with their views as to any concerns regarding the status of negotiations at that time and possible tradeoffs that are likely to occur in the waning hours.

(continued...)

[294](...continued)
S. REP. NO. 107-139, at 44-45, 49-50 (2002).

The House Ways and Means Committee report on the Trade Act of 2002 states with regard to consultations generally:

6. SECTION 4: CONSULTATIONS AND ASSESSMENT

Present/expired law

Section 102 of the Trade Act of 1974 and sections 1102(d) and 1103 of the 1988 Act set forth the fast track requirements. These provisions required the President, before entering into any trade agreement, to consult with Congress as to the nature of the agreement, how and to what extent the agreement will achieve applicable purposes, policies, and objectives, and all matters relating to agreement implementation. In addition, before entering into an agreement, the President was required to give Congress at least 90 calendar days advance notice of his intent. The purpose of this period was to provide the Congressional Committees of jurisdiction an opportunity to review the proposed agreement before it was signed.

. . . .

Explanation of provision

Section 4 of H.R. 3005, as amended, would establish a number of requirements that the President consult with Congress. Specifically, section 4(a)(1) would require the President to provide written notice and consult with the relevant committees at least 90 calendar days prior to entering into negotiations. Trade promotion authority would not apply to an implementing bill if both Houses separately agree to a procedural disapproval resolution within any 60-day period stating that the Administration has failed to notify or consult with Congress.

. . . .

Reason for change

H.R. 3005, as amended, would treat all trade agreements concluded under section 3(b) in the same manner for consultation purposes and does not differentiate between bilateral and multilateral agreements. Accordingly, the bill would extend to all such negotiations, and not just to bilateral negotiations as in the 1988 Act, the requirement that the President provide prior written notice of negotiations.

The Committee emphasizes the importance of timely, complete, and rigorous consultations between the Administration and Congress. The improvements made with respect to consultations, as compared with the expired provisions, are designed to assure maximum Congressional participation before, during, and after the trade negotiating process. The Committee notes that in the past, consultations have been at times less than ideal and wishes to improve this process considerably to make it more meaningful.

(continued...)

§ 2104(b) **(b) NEGOTIATIONS REGARDING AGRICULTURE. —**

§2104(b)(1) **(1) IN GENERAL. — Before initiating or continuing negotiations the subject matter of which is directly related to the subject matter under section 2102(b)(10)(A)(i)[295] with any country, the President shall assess whether United States tariffs on agricultural products that were bound under the Uruguay Round Agreements are lower than the tariffs bound by that country. In addition, the President shall consider whether the tariff levels bound and applied throughout the world with respect to imports from the United States are higher than United States tariffs and whether the negotiation provides an opportunity to address any such disparity. The President shall consult with the Committee on Ways and Means and the Committee on Agriculture of the House of Representatives and the Committee on Finance and the Committee on Agriculture, Nutrition, and Forestry of the Senate concerning the results of the assessment, whether it is appropriate for the United States to agree to further tariff**

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[294](...continued)
Given the significant Congressional role in trade policy set forth in the Constitution, it is imperative that Members and their staffs be given periodic and timely substantive briefings by U.S. negotiators and access to relevant documents and information sources. The Committee emphasizes that Congress must be fully involved in all phases of the negotiating process and must have the ability to fully express its views and exert its constitutional role. The Committee intends that throughout the process, the consultations address the nature of the agreement in question, how and to what extent the agreement will achieve the applicable purposes, policies, and objectives set forth in H.R. 3005, as amended, and all matters relating to implementation under section 5, including the general effect of the agreement on U.S. laws.

The provisions require broad consultations, involving Committees other than the Committee on Ways and Means. In addition, because of the special requirements of agriculture tariff negotiations, if there is a great tariff disparity between the U.S. duty rate and the rate bound or applied by other countries, additional consultation requirements would apply.

H.R. REP. NO. 107-249, at 36-42 (2002).

[295] *See supra* note 245, p. 194.

reductions based on the conclusions reached in the assessment, and how all applicable negotiating objectives will be met.[296]

[296] The joint statement of managers accompanying the conference report on the Trade Act of 2002 states with regard to negotiations on agriculture generally:

House amendment

. . . .

Section 2104(b)(1) would establish a special consultation requirement for agriculture. Specifically, before initiating negotiations concerning tariff reductions in agriculture, the President is to assess whether U.S. tariffs on agriculture products that were bound under the Uruguay Round Agreements are lower than the tariffs bound by that country. In his assessment, the President would also be required to consider whether the tariff levels bound and applied throughout the world with respect to imports from the United States are higher than U.S. tariffs and whether the negotiation provides an opportunity to address any such disparity. The President would be required to consult with the Committees on Ways and Means and Agriculture of the House and the Committees on Finance and Agriculture, Nutrition and Forestry of the Senate concerning the results of this assessment and whether it is appropriate for the United States to agree to further tariff reductions under such circumstances and how all applicable negotiating objectives would be met.

. . . .

Senate amendment

The Senate Amendment is substantially similar to the House bill, with the following exceptions:

. . . .

Conference agreement

The Senate recedes to the House with several modifications.

H.R. REP. NO. 107-624, at 163-65 (2002).

The Senate Finance Committee report on the Trade Act of 2002 states with regard to consultations on agriculture and fishing generally:

Section 4(b) establishes a special consultation requirement for agriculture and the fishing industry. Before initiating negotiations with a country concerning tariff reductions in agriculture, the President is to assess whether U.S. tariffs on agricultural products that were bound under the Uruguay Round Agreements are lower than the tariffs bound by that country. In his assessment, the President is also required to

(continued...)

§ 2104(b)(2) **(2) SPECIAL CONSULTATIONS ON IMPORT SENSITIVE PROD-**

[296](...continued)
consider whether the tariff levels bound and applied throughout the world with respect to imports from the United States are higher than U.S. tariffs on like products, and whether the negotiation provides an opportunity to address any such disparity.

The President is required to consult with the Committees on Ways and Means and Agriculture of the House and the Committees on Finance and Agriculture, Nutrition, and Forestry of the Senate concerning the results of this assessment, whether it is appropriate for the United States to agree to further tariff reductions under such circumstances, and how all applicable negotiating objectives will be met.

S. REP. NO. 107-139, at 45 (2002).

The House Ways and Means Committee report on the Trade Act of 2002 states with regard to negotiations on agriculture:

Explanation of provision

. . . .

Section 4(b) would establish a special consultation requirement for agriculture. Specifically, before initiating negotiations concerning tariff reductions in agriculture, the President is to assess whether U.S. tariffs on agriculture products that were bound under the Uruguay Round Agreements are lower than the tariffs bound by that country. In his assessment, the President would also be required to consider whether the tariff levels bound and applied throughout the world with respect to imports from the United States are higher than U.S. tariffs and whether the negotiation provides an opportunity to address any such disparity. The President would be required to consult with the Committees on Ways and Means and Agriculture of the House and the Committees on Finance and Agriculture, Nutrition and Forestry of the Senate concerning the results of this assessment and whether it is appropriate for the United States to agree to further tariff reductions under such circumstances and how all applicable negotiating objectives would be met.

. . . .

Reason for change

. . . .

The provisions require broad consultations, involving Committees other than the Committee on Ways and Means. In addition, because of the special requirements of agriculture tariff negotiations, if there is a great tariff disparity between the U.S. duty rate and the rate bound or applied by other countries, additional consultation requirements would apply.

H.R. REP. NO. 107-249, at 40-42 (2002).

UCTS. —

§ 2104(b)(2)(A)

(A) Before initiating negotiations with regard to agriculture, and, with respect to the Free Trade Area for the Americas and negotiations with regard to agriculture under the auspices of the World Trade Organization, as soon as practicable after the enactment of this Act,[297] the United States Trade Representative shall —

§ 2104(b)(2)(A)(i)

(i) identify those agricultural products subject to tariff-rate quotas on the date of enactment of this Act,[298] and agricultural products subject to tariff reductions by the United States as a result of the Uruguay Round Agreements, for which the rate of duty was reduced on January 1, 1995, to a rate which was not less than 97.5 percent of the rate of duty that applied to such article on December 31, 1994;

§ 2104(b)(2)(A)(ii)

(ii) consult with the Committee on Ways and Means and the Committee on Agriculture of the House of Representatives and the Committee on Finance and the Committee on Agriculture, Nutrition, and Forestry of the Senate concerning —

§ 2104(b)(2)(A)(ii)(I)

(I) whether any further tariff reductions on the products identified under clause (i)[299] should be appropriate, taking into account the impact of any such tariff reduction on the United States industry producing the product concerned;

§ 2104(b)(2)(A)(ii)(II)

(II) whether the products so identified face

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[297] The Trade Act of 2002 was enacted August 6, 2002.

[298] Aug. 6, 2002.

[299] *See supra* p. 233.

unjustified sanitary or phytosanitary restrictions, including those not based on scientific principles in contravention of the Uruguay Round Agreements; and

§ 2104(b)(2)(A)(ii)(III)

(III) whether the countries participating in the negotiations maintain export subsidies or other programs, policies, or practices that distort world trade in such products and the impact of such programs, policies, and practices on United States producers of the products;

§ 2104(b)(2)(A)(iii)

(iii) request that the International Trade Commission prepare an assessment of the probable economic effects of any such tariff reduction on the United States industry producing the product concerned and on the United States economy as a whole; and

§ 2104(b)(2)(A)(iv)

(iv) upon complying with clauses (i),[300] (ii),[301] and (iii),[302] notify the Committee on Ways and Means and the Committee on Agriculture of the House of Representatives and the Committee on Finance and the Committee on Agriculture, Nutrition, and Forestry of the Senate of those products identified under clause (i)[303] for which the Trade Representative intends to seek tariff liberalization in the negotiations and the reasons for seeking such tariff liberalization.

§ 2104(b)(2)(B)

(B) If, after negotiations described in subparagraph

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[300] *See supra* p. 233.

[301] *See supra* p. 233.

[302] *See supra* p. 234.

[303] *See supra* p. 233.

(A)[304] are commenced —

§ 2104(b)(2)(B)(i)

(i) the United States Trade Representative identifies any additional agricultural product described in subparagraph (A)(i)[305] for tariff reductions which were not the subject of a notification under subparagraph (A)(iv),[306] or

§ 2104(b)(2)(B)(ii)

(ii) any additional agricultural product described in subparagraph (A)(i)[307] is the subject of a request for tariff reductions by a party to the negotiations, the Trade Representative shall, as soon as practicable, notify the committees referred to in subparagraph (A)(iv)[308] of those products and the reasons for seeking such tariff reductions.[309]

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[304] *See supra* p. 233.

[305] *See supra* p. 233.

[306] *See supra* p. 234.

[307] *See supra* p. 233.

[308] That is, the Committee on Ways and Means and the Committee on Agriculture of the House of Representatives and the Committee on Finance and the Committee on Agriculture, Nutrition, and Forestry of the Senate. *See supra* p. 234.

[309] The joint statement of managers accompanying the conference report on the Trade Act of 2002 states with regard to consultations on import sensitive products:

House amendment

. . . .

Section 2104(b)(2) provides special consultations on import sensitive agriculture products. Specifically, before initiating negotiations on agriculture and as soon as practicable with respect to the Free Trade Area of the Americas and WTO negotiations, USTR is to identify import sensitive agriculture products and consult with the Committees on Ways and Means and Agriculture of the House and the Committees on Finance and Agriculture, Nutrition, and Forestry in the Senate concerning whether any further tariff reduction should be appropriate, and whether the identified products face unjustified sanitary or phytosanitary barriers. USTR is also to request that the

(continued...)

[309](...continued)
International Trade Commission prepare an assessment of the probable economic effects of any such tariff reduction on the U.S. industry producing the product and on the U.S. economy as a whole. USTR is to then notify the Committees of those products for which it intends to seek tariff liberalization as well as the reasons. If USTR commences negotiations and then identifies additional import sensitive agriculture products, or a party to the negotiations requests tariff reductions on such a product, then USTR shall notify the Committees as soon as practicable of those products and the reasons for seeking tariff reductions.

. . . .

Senate amendment

The Senate Amendment is substantially similar to the House bill, with the following exceptions:

Consultations on export subsidies and distorting policies. Section 2104(b)(2)(A)(ii)(III) requires consultations on whether nations producing identified products maintain export subsidies or distorting policies that distort trade and impact of policies on U.S. producers.

. . . .

Conference agreement

The Senate recedes to the House with several modifications. The Conferees agree to section 2104(b)(2)(A)(ii)(III) of the Senate amendment, which requires consultations on whether other nations producing identified products maintain export subsidies or distorting policies that distort trade and impact of policies on U.S. producers.

H.R. REP. NO. 107-624, at 163-65 (2002).

The Senate Finance Committee report on the Trade Act of 2002 states with regard to consultations on import sensitive products:

Section 4(b)(2) sets forth special consultation procedures for import-sensitive agricultural products. It requires the U.S. Trade Representative, before initiating agriculture negotiations, to identify import-sensitive agricultural products, and consult with the Committee on Ways and Means and the Committee on Agriculture of the House of Representatives and the Committee on Finance and the Committee on Agriculture, Nutrition, and Forestry of the Senate concerning whether further tariff reductions on these products would be appropriate, whether these products face unjustified sanitary and phytosanitary restrictions, and whether the countries participating in the negotiations maintain export subsidies or other programs that distort world trade in these products. The U.S. Trade Representative also must request that the International Trade Commission prepare an assessment of the probable economic effect of any tariff reduction on the U.S. industry producing an import-sensitive agricultural product. After

(continued...)

§ 2104(b)(3) **(3) NEGOTIATIONS REGARDING THE FISHING INDUSTRY. — Before initiating, or continuing, negotiations which directly relate to fish or shellfish trade with any country, the President shall consult with the Committee on Ways and Means and the Committee on Resources of the House of Representatives, and the Committee on Finance and the Committee on Commerce, Science, and Transportation of the Senate, and shall keep the Committees apprised of negotiations on an ongoing and timely basis.**[310]

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[309](...continued)
complying with these provisions, the U.S. Trade Representative must notify the aforementioned Committees of his or her intention to seek tariff liberalization in the identified products. Further, if during the course of negotiations additional import-sensitive agricultural products become candidates for tariff reductions, the Trade Representative must notify the foregoing Committees promptly and explain the reasons for seeking the proposed tariff reductions.

For purposes of these special consultation requirements, "import-sensitive agricultural products" are defined as agricultural products that are currently subject to tariff-rate quotas and agricultural products for which the rate of duty on the date the World Trade Organization was established (January 1, 1995) was lowered by 2.5 percent.

S. REP. NO. 107-139, at 45 (2002).

[310] The joint statement of managers accompanying the conference report on the Trade Act of 2002 states with regard to consultations on fishing:

Senate amendment

The Senate Amendment is substantially similar to the House bill, with the following exceptions:

. . . .

Consultations relating to fishing trade. Section 2104(b)(3) requires that for negotiations relating to fishing trade, the Administration will keep fully apprised and on timely basis consult with the House Resources Committee and the Senate Commerce Committee.

. . . .

Conference agreement

(continued...)

§2104(c) **(c) NEGOTIATIONS REGARDING TEXTILES. — Before initiating or continuing negotiations the subject matter of which is directly related to textiles and apparel products with any country, the President shall assess whether United States tariffs on textile and apparel products that were bound under the Uruguay Round Agreements are lower than the tariffs bound by that country and whether the negotiation provides an opportunity to address any such disparity. The President shall consult with the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate concerning the results of the assessment, whether it is appropriate for the United States to agree to further tariff reductions based on the conclusions reached in the assessment, and how all applicable negotiating objectives will be met.[311]**

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[310](...continued)

The Senate recedes to the House with several modifications. . . . In addition, the Conferees agree to section 2104(b)(3) of the Senate amendment, which requires that for negotiations relating to fishing trade, the Administration will keep fully apprised and on timely basis consult with the House Resources Committee and the Senate Commerce Committee.

H.R. REP. NO. 107-624, at 164-65 (2002).

The Senate Finance Committee report on the Trade Act of 2002 states with regard to consultations on fishing:

> Section 4(b)(3) requires the President, before initiating or continuing negotiations directly related to fish or shellfish trade, to consult with the Committee on Ways and Means and the Committee on Resources of the House of Representatives, and the Committee on Finance and the Committee on Commerce, Science, and Transportation of the Senate and to keep these Committees apprized of negotiations on an ongoing and timely basis.

S. REP. NO. 107-139, at 46 (2002).

[311] The joint statement of managers accompanying the conference report on the Trade Act of 2002 states with regard to consultations on textiles:

House amendment

. . . .

(continued...)

[311](...continued)

Section 2104(c) would establish a special consultation requirement for textiles. Specifically, before initiating negotiations concerning tariff reductions in textiles and apparel, the President is to assess whether U.S. tariffs on textile and apparel products that were bound under the Uruguay Round Agreements are lower than the tariffs bound by that country. In his assessment, the President would also be required to consider whether the tariff levels bound and applied throughout the world with respect to imports from the United States are higher than U.S. tariffs and whether the negotiation provides an opportunity to address any such disparity. The President would be required to consult with the Committee on Ways and Means of the House and the Committee on Finance of the Senate concerning the results of this assessment and whether it is appropriate for the United States to agree to further tariff reductions under such circumstances and how all applicable negotiating objectives would be met.

. . . .

Senate amendment

The Senate Amendment is substantially similar to the House bill, with the following exceptions:

. . . .

Conference agreement

The Senate recedes to the House with several modifications.

H.R. REP. NO. 107-624, at 163-65 (2002).

The Senate Finance Committee report on the Trade Act of 2002 states with regard to consultation on textiles:

Section 4(c) sets forth a special consultation requirement for negotiations regarding textiles. Textile and apparel production in the United States is especially sensitive to import competition. Pressures on this sector are increasing, due to the gradual elimination of quotas on textile imports. Under WTO rules, all quotas must be eliminated by January 1, 2005. Given these special circumstances, the Committee believes there is a need for a separate mechanism for consultations in this sector. Accordingly, before initiating trade negotiations with a country, the bill requires the President to determine whether U.S. textile and apparel tariffs bound under the Uruguay Round Agreements are lower than tariffs bound by that country, and whether the negotiation affords an opportunity to address that disparity. The President then must consult with the House Ways and Means Committee and the Senate Finance Committee about his assessment, whether the United States should agree to further textile and apparel tariff reductions, and how all applicable negotiating objectives will be met.

S. REP. NO. 107-139, at 40-59 (2002).

§ 2104(d) **(d) CONSULTATION WITH CONGRESS BEFORE AGREEMENTS ENTERED INTO. —**

§ 2104(d)(1) **(1) CONSULTATION. — Before entering into any trade agreement under section 2103(b),[312] the President shall consult with —**

§ 2104(d)(1)(A) **(A) the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate;**

§ 2104(d)(1)(B) **(B) each other committee of the House and the Senate, and each joint committee of the Congress, which has jurisdiction over legislation involving subject matters which would be affected by the trade agreement; and**

§2104(d)(1)(C) **(C) the Congressional Oversight Group convened under section 2107.[313]**

§ 2104(d)(2) **(2) SCOPE. — The consultation described in paragraph (1)[314] shall include consultation with respect to —**

§ 2104(d)(2)(A) **(A) the nature of the agreement;**

§ 2104(d)(2)(B) **(B) how and to what extent the agreement will achieve the applicable purposes, policies, priorities, and objectives of this title; and**

§ 2104(d)(2)(C) **(C) the implementation of the agreement under section**

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[312] Section 2103(b) addresses "Agreements Regarding Tariff and Nontariff Barriers." *See supra* p. 185.

[313] *See supra* note 292, p. 223.

[314] *See supra* p. 240.

2105,[315] including the general effect of the agreement on existing laws.

§ 2104(d)(3) **(3) REPORT REGARDING UNITED STATES TRADE REMEDY LAWS. —**

§ 2104(d)(3)(A) **(A) CHANGES IN CERTAIN TRADE LAWS. — The President, at least 180 calendar days before the day on which the President enters into a trade agreement under section 2103(b),[316] shall report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate —**

§ 2104(d)(3)(A)(i) **(i) the range of proposals advanced in the negotiations with respect to that agreement, that may be in the final agreement, and that could require amendments to title VII of the Tariff Act of 1930[317] or to chapter 1 of title II of the Trade Act of 1974;[318] and**

§ 2104(d)(3)(A)(ii) **(ii) how these proposals relate to the objectives described in section 2102(b)(14).[319]**

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[315] *See supra* p. 257.

[316] Section 2103(b) addresses "Agreements Regarding Tariff and Nontariff Barriers." *See supra* p. 185.

[317] 19 U.S.C. §§ 1671 et seq.

[318] Title II of the Trade Act of 1974, Pub. L. No. 93-618, §§ 201-284, 88 Stat. 1978, 2011-2041, 19 U.S.C. §§ 2251-2394, addresses "Relief from Injury Caused by Import Competition."

[319] Section 2102(b)(14) addresses objectives with regard to "Trade Remedy Laws." *See supra* note 245, p. 199.

The joint statement of managers accompanying the conference report on the Trade Act of 2002 states with regard to the consultation requirements of subsection (d):

SEC. 2104 — CONSULTATIONS AND ASSESSMENT

(continued...)

[319](...continued)
Present/expired law

Section 102 of the Trade Act of 1974 and sections 1102(d) and 1103 of the 1988 Act set forth the fast track requirements. These provisions required the President, before entering into any trade agreement, to consult with Congress as to the nature of the agreement, how and to what extent the agreement will achieve applicable purposes, policies, and objectives, and all matters relating to agreement implementation. In addition, before entering into an agreement, the President was required to give Congress at least 90 calendar days advance notice of his intent. The purpose of this period was to provide the Congressional Committees of jurisdiction an opportunity to review the proposed agreement before it was signed.

. . . .

House amendment

Section 2104 of the House amendment to H.R. 3009 would establish a number of requirements that the President consult with Congress. . . .

. . . .

In addition, section 2104(d) would require the President, before entering into any trade agreement, to consult with the relevant Committees concerning the nature of the agreement, how and to what extent the agreement will achieve the applicable purposes, policies, and objectives set forth in the House amendment to H.R. 3009 and all matters relating, to implementation under section 2105, including the general effect of the agreement on U.S. laws.

. . . .

Senate amendment

The Senate Amendment is substantially similar to the House bill, with the following exceptions:

. . . .

Special reporting requirements on U.S. trade remedy laws. Section 2104(d) provides that the President, at least 90 calendar days before the President enters into a trade agreement, shall notify the House Ways and Means Committee and the Senate Finance Committee in writing any amendments to U.S. antidumping and countervailing duty laws (title VII of the Tariff Act of 1930) or U.S. safeguard provisions (chapter 1 of title II of the Trade Act of 1974) that the President proposes to include in the implementing legislation. On the date that the President transmits the notification, the President must also transmit to the Committees a report explaining his reasons for believing that amendments to these trade remedy laws are necessary to implement the trade agreement and his reasons for believing that such amendments are consistent with

(continued...)

[319](...continued)
the negotiating objective on this issue. Not later than 60 calendar days after the date on which the President transmits notification to the relevant committees, the Chairman and ranking members of the House Ways and Means Committee and the Senate Finance Committee[] shall issue reports stating whether the proposed amendments described in the President's notification are consistent with the negotiating objectives on trade laws.

Conference agreement

The Senate recedes to the House with several modifications. . . .

Finally, the Conferees agree to include the notification and report on changes to trade remedy laws in sections 2104(d)(3)(A) and (B) in the Senate amendment with modifications. Given the priority that Conferees attach to keeping U.S. trade remedy laws strong and ensuring that they remain fully enforceable, the Conference agreement puts in place a process requiring special scrutiny of any impact that trade agreements may have on these laws. The process requires the President, at least 180 calendar days before the day on which he enters into a trade agreement, to report to the Committees on Ways and Means and the Committee on Finance the range of proposals advanced in trade negotiations and may be in the final agreement that could require amendments to title VII of the Tariff Act of 1930 or to chapter 1 of title II of the Trade Act of 1974; and how these proposals relate to the objectives described in section 2102(b)(14).

H.R. REP. NO. 107-624, at 162-65 (2002).

The Senate Finance Committee report on the Trade Act of 2002 states with regard to the consultation requirements that would become subsection (d):

Section 4(d) requires the President, before entering into any trade agreement, to consult with the relevant Committees and the Congressional Oversight Group concerning the nature of the agreement, how and to what extent the agreement will achieve the applicable purposes, policies, and objectives set forth in H.R. 3005, as amended, and all matters relating to implementation under section 5, including the general effect of the agreement on U.S. laws.

Section 4(d)(3) of the bill, in conjunction with section 5(a)(2)(B)(ii)(VI), establishes a special structure for consultation between the President and Congress on the subject of changes to U.S. trade remedy laws that may be required by trade agreements to which the United States may become a party. The importance of preserving the integrity of trade remedy laws — in particular, the antidumping, countervailing duty, and safeguards laws — is described elsewhere in the bill. For example, section 2(c)(9)(A) directs the President to "preserve the ability of the United States to enforce rigorously its trade laws." Section 1(b)(3) expresses concern about the way in which WTO dispute settlement panels and the Appellate Body have handled cases involving U.S. trade remedy laws.

Given the priority the Committee attaches to keeping U.S. trade remedy laws strong and ensuring that they remain fully enforceable, the bill puts in place a process requiring

(continued...)

[319](...continued)
special scrutiny of any impact that trade agreements may have on these laws. The process put in place by the bill requires Presidential comments on pending trade agreements, followed by congressional replies, followed by additional Presidential comments. It is the Committee's expectation that this process will focus attention on the interaction between trade agreements and trade laws and reenforce the goal of not sacrificing the latter for the sake of the former.

Under section 4(d)(3), at least 90 calendar days before entering into a trade agreement, the President must notify the House Committee on Ways and Means and the Senate Committee on Finance of any changes to the antidumping, countervailing duty, or safeguard laws he proposes to include in a bill implementing the trade agreement. Along with this notification, the President must transmit to the Committees a report explaining his reasons for believing that these changes to U.S. law are (1) necessary to implement the agreement, and (2) consistent with the purposes, policies and objectives (described in section 2(c)(9) of the bill) of avoiding agreements that lessen the effectiveness of trade remedy laws and preserving the ability of the United States to enforce those laws rigorously.

Not later than 60 calendar days after receiving the foregoing notification and report from the President, the Chairmen and Ranking Members of the Ways and Means and Finance Committees would be required to transmit to their respective Chambers reports of their own. These reports would be developed in consultation with the membership of the respective Committees and would state whether the changes to U.S. trade remedy laws proposed by the President are, in fact, consistent with the purposes, policies, and objectives of avoiding agreements that lessen the effectiveness of those laws and preserving the ability of the United States to enforce them rigorously. In the event that the Chairman and Ranking Member of either of the Committees disagreed with one another, the report would contain the separate views of the Chairman and Ranking Member.

The purpose of the reports by the Chairmen and Ranking Members is to give the House and Senate membership alternative perspectives on the likely impact of proposed changes to trade remedy laws and thereby keep the bodies fully informed. Further, it is the Committee's expectation that anticipation of the reports by the Chairmen and Ranking Members will create a strong incentive for the President to consult closely with the Committees during negotiation of trade agreements. Working closely with the Committees may be expected to reduce the likelihood of dissent in the reports by the Chairmen and Ranking Members and thus improve the chances of congressional approval of the proposed trade agreement.

The Committee notes that, under the bill, there would be no penalty in the event that the Chairman and Ranking Member of either Committee failed to issue their report as prescribed by section 4(d)(3)(C) and (D). In other words, a bill implementing the trade agreement at issue would remain eligible for consideration under trade authorities procedures. However, the Committee believes that the reports by the Chairmen and Ranking Members contemplated by this bill will play a critical part in congressional consideration of trade agreements and fully expects that they will be transmitted in a

(continued...)

§ 2104(d)(3)(B) **(B) CERTAIN AGREEMENTS. — With respect to a trade agreement entered into with Chile or Singapore, the report referred to in subparagraph (A)[320] shall be submitted by the President at least 90 calendar days before the day on**

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[319](...continued)
timely fashion. No negative inferences with respect to any aspect of the President's consultations with Congress should be drawn from the fact that the Chairman and Ranking Member of either Committee file dissenting reports.

The final piece in the special procedures for consultation on trade remedy laws is a response by the President to the reports by the Chairmen and Ranking Members. Section 5(a)(2) of the bill sets forth certain supporting information that the President must provide to Congress when transmitting a trade agreement and implementing bill for consideration under trade authorities procedures. Among the supporting information required is a response to the reports of the Chairmen and Ranking Members, in the event that those reports find the President's proposed changes to trade remedy laws to be inconsistent with the purposes, policies, and objectives of avoiding agreements that lessen the effectiveness of those laws and preserving the ability of the United States to enforce them rigorously. In that case, the President must explain why he disagrees with the report of the Chairman and/or Ranking Member, as the case may be. This explanation (along with other information set forth in section 5(a)(2)) is required in order for an agreement entered into under the provisions of this bill to enter into force with respect to the United States.

S. REP. NO. 107-139, at 46-48 (2002).

The House Ways and Means Committee report on the Trade Act of 2002 states with regard to the consultation requirements that would become subsection (d):

Explanation of provision

. . . .

In addition, section 4(c) would require the President, before entering into any trade agreement, to consult with the relevant Committees concerning the nature of the agreement, how and to what extent the agreement will achieve the applicable purposes, policies, and objectives set forth in H.R. 3005, as amended, and all matters relating to implementation under section 5, including the general effect of the agreement on U.S. laws.

H.R. REP. NO. 107-249, at 41 (2002).

[320] *See supra* p. 241.

which the President enters into that agreement.[321]

§ 2104(d)(3)(C) **(C) RESOLUTIONS. —**

§ 2104(d)(3)(C)(i) **(i) At any time after the transmission of the report under subparagraph (A),**[322] **if a resolution is introduced with respect to that report in either House of**

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[321] The joint statement of managers accompanying the conference report on the Trade Act of 2002 states with regard to the Chile and Singapore agreements:

> The Conference agreement states that, with respect to agreements entered into with Chile and Singapore, the report referenced in section 2104(d)(3)(A) shall be submitted by the President at least 90 calendar days before the day on which the President enters into a trade agreement with either country.

H.R. REP. NO. 107-624, at 166 (2002).

[322] *See supra* p. 241.

Congress,[323] the procedures set forth in clauses (iii)[324] through (vi)[325] shall apply to that resolution if —

§ 2104(d)(3)(C)(i)(I)

(I) no other resolution with respect to that report has previously been reported in that House of Congress by the Committee on Ways and Means or the Committee on Finance, as the case may be, pursuant to those procedures; and

§ 2104(d)(3)(C)(i)(II)

(II) no procedural disapproval resolution[326] under section 2105(b)[327] introduced with respect to a trade agreement entered into pursuant to the negotiations

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[323] The joint statement of managers accompanying the conference report on the Trade Act of 2002 states with regard to the resolutions in section 2104(d)(3)(C):

> The Conference agreement also provides a mechanism for any Member in the House or Senate to introduce at any time after the President's report is issued a nonbinding resolution which states "that the _____ finds that the proposed changes to U.S. trade remedy laws contained in the report of the President transmitted to the Congress on _____ under section 2104(d)(3) of the Bipartisan Trade Promotion Authority Act of 2002 with respect to _____, are inconsistent with the negotiating objectives described in section 2102(b)(14) of that Act.", with the first blank space being filled in with either the "House of Representatives" or the "Senate", as the case may be, the second blank space filled in with the appropriate date of the report, and the third blank space being filled in with the name of the country or countries involved.
>
> The resolution is referred to the Ways and Means and Rules Committees in the House and the Finance Committee in the Senate, and is privileged on the floor if it is reported by the Committees. The Conference agreement allows only one resolution (either a nonbinding resolution or a disapproval resolution) per agreement to be eligible for the trade promotion authority procedures contained in sections 152 (d) and (e) of the Trade Act of 1974. The one resolution quota is satisfied for the House only after the Ways and Means Committee reports a resolution, and for the Senate only after the Finance Committee reports a resolution.

H.R. REP. NO. 107-624, at 165-66 (2002).

[324] *See infra* p. 248.

[325] *See infra* p. 249.

[326] Section 2105(b)(1)(B)(i) defines "procedural disapproval resolution." *See infra* p. 271.

[327] *See infra* p. 271.

to which the report under subparagraph (A)[328] relates has previously been reported in that House of Congress by the Committee on Ways and Means or the Committee on Finance, as the case may be.

§ 2104(d)(3)(C)(ii)

(ii) For purposes of this subparagraph, the term "resolution" means only a resolution of either House of Congress, the matter after the resolving clause of which is as follows: "That the _____ finds that the proposed changes to United States trade remedy laws contained in the report of the President transmitted to the Congress on _____ under section 2104(d)(3) of the Bipartisan Trade Promotion Authority Act of 2002[329] with respect to _____, are inconsistent with the negotiating objectives described in section 2102(b)(14) of that Act.",[330] with the first blank space being filled with the name of the resolving House of Congress, the second blank space being filled with the appropriate date of the report, and the third blank space being filled with the name of the country or countries involved.

§ 2104(d)(3)(C)(iii)

(iii) Resolutions in the House of Representatives —

§ 2104(d)(3)(C)(iii)(I)

(I) may be introduced by any Member of the House;

§ 2104(d)(3)(C)(iii)(II)

(II) shall be referred to the Committee on Ways and Means and, in addition, to the Committee on Rules; and

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[328] *See supra* p. 241.

[329] *See supra* p. 241.

[330] Section 2104(d)(3) of the Bipartisan Trade Promotion Authority Act of 2002 (the Trade Act of 2002) addresses "Trade Remedy Laws." *See supra* note 245, p. 199.

§ 2104(d)(3)(C)(iii)(III) **(III) may not be amended by either Committee.**

§ 2104(d)(3)(C)(iv) **(iv) Resolutions in the Senate —**

§ 2104(d)(3)(C)(iv)(I) **(I) may be introduced by any Member of the Senate;**

§ 2104(d)(3)(C)(iv)(II) **(II) shall be referred to the Committee on Finance; and**

§ 2104(d)(3)(C)(iv)(III) **(III) may not be amended.**

§ 2104(d)(3)(C)(iv)[(v)] **(iv)[(v)] It is not in order for the House of Representatives to consider any resolution that is not reported by the Committee on Ways and Means and, in addition, by the Committee on Rules.**

§ 2104(d)(3)(C)(v)[(vi)] **(v)[(vi)] It is not in order for the Senate to consider any resolution that is not reported by the Committee on Finance.**

§ 2104(d)(3)(C)(vi)[(vii)] **(vi)[(vii)] The provisions of section 152(d)[331] and (e)[332] of the Trade Act of 1974 (19 U.S.C. 2192(d) and (e)) (relating to floor consideration of certain resolutions in the House and Senate) shall apply to resolutions.**

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[331] *See supra* p. 140.

[332] *See supra* p. 142.

§ 2104(e)

(e) ADVISORY COMMITTEE REPORTS. — The report required under section 135(e)(1) of the Trade Act of 1974[333] regarding any trade agreement entered into under section 2103(a)[334] or (b)[335] of this Act shall be provided to the President, the Congress, and the United States Trade Representative not later than 30 days after the date on which the President notifies the Congress under section 2103(a)(1)[336] or 2105(a)(1)(A)[337] of the President's intention to enter into the agreement.[338]

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[333] Section 135(e)(1) of the Trade Act of 1974 is codified as amended at 19 U.S.C. § 2155(e)(1), and states:

> (e) MEETING OF ADVISORY COMMITTEES AT CONCLUSION OF NEGOTIATIONS. —
>
> (1) The Advisory Committee for Trade Policy and Negotiations, each appropriate policy advisory committee, and each sectoral or functional advisory committee, if the sector or area which such committee represents is affected, shall meet at the conclusion of negotiations for each trade agreement entered into under section 2103 of the Bipartisan Trade Promotion Authority Act of 2002 [19 U.S.C. § 3803], to provide to the President, to Congress, and to the United States Trade Representative a report on such agreement. Each report that applies to a trade agreement entered into under section 2103 of the Bipartisan Trade Promotion Authority Act of 2002 [19 U.S.C. § 3803] shall be provided under the preceding sentence not later than the date on which the President notifies the Congress under section 2105(a)(1)(A) of the Bipartisan Trade Promotion Authority Act of 2002 [19 U.S.C. § 3805(a)(1)(A)] of his intention to enter into that agreement.

19 U.S.C. § 2155(e)(1).

[334] *See supra* p. 167.

[335] *See supra* p. 185.

[336] *See supra* p. 167.

[337] *See infra* p. 257.

[338] The joint statement of managers accompanying the conference report on the Trade Act of 2002 states with regard to Advisory Committee reports:

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>
> *Present/expired law*
>
> . . . .

(continued...)

[338](...continued)

Section 135(e) of the Trade Act of 1974 required that the Advisory Committee for Trade Policy and Negotiations meet at the conclusion of negotiations for each trade agreement and provide a report as to whether and to what extent the agreement promotes the economic interests of the United States and achieves the applicable overall and principal negotiating objectives of section 1101 of the 1988 Act. The report was due not later than the date on which the President notified Congress of his intent to enter into an agreement. With regard to the Uruguay Round, the report was due 30 days after the date of notification.

House amendment

. . . .

Section 2104(e) would require that the report of the Advisory Committee for Trade Policy and Negotiations under section 135(e)(1) of the Trade Act of 1974 be provided not later than 30 days after the date on which the President notifies Congress of his intent to enter into the agreement under section 2105(a)(1)(A).

. . . .

Senate amendment

The Senate Amendment is substantially similar to the House bill . . . .

. . . .

Conference agreement

The Senate recedes to the House with several modifications.

H.R. REP. NO. 107-624, at 162-65 (2002).

The Senate Finance Committee report on the Trade Act of 2002 states with regard to Advisory Committee reports:

Section 4(e) concerns the timing of certain reports to be prepared by the Advisory Committee on Trade Policy and Negotiations (the "ACTPN") and sectoral or functional advisory committees at the conclusion of trade agreement negotiations.

The ACTPN is an entity that Congress directed the President to establish in section 135 of the Trade Act of 1974. It consists of up to 45 members, appointed by the President on the recommendation of the U.S. Trade Representative for 2-year terms, and includes representatives from non-Federal governments, labor, industry, agriculture, small business, service industries, retailers, nongovernmental environmental and conservation organizations, and consumer interests. The ACTPN's mandate is to provide overall policy advice on trade negotiations, the operation of trade agreements in force, and other trade policy matters.

(continued...)

[338](...continued)

The Trade Act of 1974 also directed the President to establish sectoral or functional advisory committees. Like the ACTPN, the sectoral or functional committees provide advice on negotiations, operation of trade agreements, and trade policy matters. Unlike the ACTPN, which focuses on the economy as a whole, the sectoral or functional committees focus on particular parts of the economy.

Section 135(e)(1) of the Trade Act of 1974 directed the ACTPN, as well as the sectoral or functional committees whose issue areas are affected by a negotiation, to meet at the conclusion of a trade agreement negotiation and to prepare a report for the President, Congress, and the U.S. Trade Representative.

Under the 1988 Omnibus Trade and Competitiveness Act, the advisory committee reports were required to be submitted no later than the date on which the President notified Congress of his intention to enter into an agreement. In recognition of the fact that important terms of trade agreements often are not determined before the final hours of the negotiations, the present bill would permit the committees to submit their reports within 30 days after the President notifies his intent to enter into an agreement, as opposed to requiring the report be filed on the same day as that notification. The Committee believes that the additional time would contribute to the usefulness of the reports.

S. REP. NO. 107-139, at 48 (2002).

The House Ways and Means Committee report on the Trade Act of 2002 states with regard to Advisory Committee reports:

Present/expired law

. . . .

Section 135(e) of the Trade Act of 1974 required that the Advisory Committee for Trade Policy and Negotiations meet at the conclusion of negotiations for each trade agreement and provide a report as to whether and to what extent the agreement promotes the economic interests of the United States and achieves the applicable overall and principal negotiating objectives of section 1101 of the 1988 Act. The report was due not later than the date on which the President notified Congress of his intent to enter into an agreement. With regard to the Uruguay Round, the report was due 30 days after the date of notification.

Explanation of provision

. . . .

Section 4(c) would require that the report of the Advisory Committee for Trade Policy and Negotiations under section 135(e)(1) of the Trade Act of 1974 be provided not later than 30 days after the date on which the President notifies Congress of his intent to enter into the agreement under section 5(a)(1)(A).

(continued...)

§ 2104(f) **(f) ITC ASSESSMENT. —**

§2104(f)(1) **(1) IN GENERAL. — The President, at least 90 calendar days before the day on which the President enters into a trade agreement under section 2103(b),[339] shall provide the International Trade Commission (referred to in this subsection as "the Commission") with the details of the agreement as it exists at that time and request the Commission to prepare and submit an assessment of the agreement as described in paragraph (2).[340] Between the time the President makes the request under this paragraph and the time the Commission submits the assessment, the President shall keep the Commission current with respect to the details of the agreement.**

§ 2104(f)(2) **(2) ITC ASSESSMENT. — Not later than 90 calendar days after the President enters into the agreement, the Commission[341] shall submit to the President and the Congress a report assessing the likely impact of the agreement on the United**

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[338](...continued)

. . . .

Reason for change

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H.R. 3005, as amended, would permit the Advisory Committee for Trade Policy and Negotiations to submit its report after the President notifies his intent to enter into an agreement, as opposed to requiring the report be filed on the same day as that notification. The Committee believes that the additional time would contribute to the usefulness of the report.

H.R. REP. NO. 107-249, at 40-42 (2002).

[339] Section 2103(b) addresses "Agreements Regarding Tariff and Nontariff Barriers." *See supra* p. 185.

[340] *See infra* p. 253.

[341] For the purposes of this subsection, section 2104(f)(1) defines "the Commission" to mean the International Trade Commission. *See infra* p. 253.

States economy as a whole and on specific industry sectors, including the impact the agreement will have on the gross domestic product, exports and imports, aggregate employment and employment opportunities, the production, employment, and competitive position of industries likely to be significantly affected by the agreement, and the interests of United States consumers.[342]

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[342] The joint statement of managers accompanying the conference report on the Trade Act of 2002 states with regard to the International Trade Commission assessment:

House amendment

. . . .

Finally, section 2104(f) would require the President, at least 90 days before entering into a trade agreement, to ask the International Trade Commission to assess the agreement, including the likely impact of the agreement on the U.S. economy as a whole, specific industry sectors, and U.S. consumers. That report would be due 90 days from the date after the President enters into the agreement.

Senate amendment

The Senate Amendment is substantially similar to the House bill . . . .

. . . .

Conference agreement

The Senate recedes to the House with several modifications.

H.R. REP. NO. 107-624, at 163-65 (2002).

The Senate Finance Committee report on the Trade Act of 2002 states with regard to the International Trade Commission assessment:

Finally, section 4(f) requires the President, at least 90 days before entering into a trade agreement, to ask the International Trade Commission to assess the agreement, including the likely impact of the agreement on the U.S. economy as a whole, specific industry sectors, and U.S. consumers. The ITC's report of its assessment must be transmitted to Congress and the President not later than 90 days from the date on which the President enters into the agreement.

S. REP. NO. 107-139, at 48-49 (2002).

The House Ways and Means Committee report on the Trade Act of 2002 states with regard

(continued...)

§ 2104(f)(3)

(3) REVIEW OF EMPIRICAL LITERATURE. — In preparing the assessment, the Commission[343] shall review available economic assessments regarding the agreement, including literature regarding any substantially equivalent proposed agreement, and shall provide in its assessment a description of the analyses used and conclusions drawn in such literature, and a discussion of areas of consensus and divergence between the various analyses and conclusions, including those of the Commission regarding the agreement.

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[342](...continued)
to the International Trade Commission assessment:

> Finally, section 4(e) would require the President, at least 90 days before entering into a trade agreement, to ask the International Trade Commission to assess the agreement, including the likely impact of the agreement on the U.S. economy as a whole, specific industry sectors, and U.S. consumers. That report would be due 90 days from the date after the President enters into the agreement.

H.R. REP. NO. 107-249, at 41 (2002).

[343] For the purposes of this subsection, section 2104(f)(1) defines "the Commission" to mean the International Trade Commission. *See infra* p. 253.

§ 2105 **SEC. 2105. IMPLEMENTATION OF TRADE AGREEMENTS.**

§ 2105(a) **(a) IN GENERAL. —**

§ 2105(a)(1) **(1) NOTIFICATION AND SUBMISSION. — Any agreement entered into under section 2103(b)[344] shall enter into force with respect to the United States if (and only if) —**

§ 2105(a)(1)(A) **(A) the President, at least 90 calendar days before the day on which the President enters into the trade agreement, notifies the House of Representatives and the Senate of the President's intention to enter into the agreement, and promptly thereafter publishes notice of such intention in the Federal Register;**

§2105(a)(1)(B) **(B) within 60 days after entering into the agreement, the President submits to the Congress a description of those changes to existing laws that the President considers would be required in order to bring the United States into compliance with the agreement;**

§ 2105(a)(1)(C) **(C) after entering into the agreement, the President submits to the Congress, on a day on which both Houses of Congress are in session, a copy of the final legal text of the agreement, together with —**

§ 2105(a)(1)(C)(i) **(i) a draft of an implementing bill[345] described in**

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[344] Section 2103(b) addresses "Agreements Regarding Tariff and Nontariff Barriers." *See supra* p. 185.

[345] For the purposes of this title, section 2103(b)(3)(A) (*see supra* p. 202) defines "implementing bill" to mean a bill that contains provisions (described in subparagraph 2103(b)(3)(B) (*see supra* p. 205)) approving or implementing a trade agreement entered into under section 2103(b) (*see supra* p. 185). Section 2103(b)(3)(A) (*see supra* p. 202) applies the trade authorities procedures of section 151 of the Trade Act of 1974 (*see supra* p. 47) to such an

(continued...)

section 2103(b)(3);[346]

§ 2105(a)(1)(C)(ii) **(ii) a statement of any administrative action proposed to implement the trade agreement; and**

§ 2105(a)(1)(C)(iii) **(iii) the supporting information described in paragraph (2);**[347] **and**

§ 2105(a)(1)(D) **(D) the implementing bill**[348] **is enacted into law.**[349]

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[345](...continued)
implementing bill.

[346] Section 2103(b) addresses "Agreements Regarding Tariff and Nontariff Barriers." *See supra* p. 185.

[347] *See infra* p. 265.

[348] For the purposes of this title, section 2103(b)(3)(A) (*see supra* p. 202) defines "implementing bill" to mean a bill that contains provisions (described in subparagraph 2103(b)(3)(B) (*see supra* p. 205)) approving or implementing a trade agreement entered into under section 2103(b) (*see supra* p. 185). Section 2103(b)(3)(A) (*see supra* p. 202) applies the trade authorities procedures of section 151 of the Trade Act of 1974 (*see supra* p. 47) to such an implementing bill.

[349] The joint statement of managers accompanying the conference report on the Trade Act of 2002 states with regard to the notification and submission process:

SEC. 2105 — IMPLEMENTATION OF TRADE AGREEMENTS

Present/expired law

Before entering into the draft agreement, the President was required to give Congress 90 days advance notice (120 days for the Uruguay Round) to provide an opportunity for revision before signature. After entering into the agreement, the President was required to submit formally the draft agreement, implementing legislation, and a statement of administrative action. Once the bill was formally introduced, there was no opportunity to amend any portion of the bill — whether on the floor or in committee. Consequently, before the formal introduction took place, the committees of jurisdiction would hold hearings, "unofficial" or "informal" mark-up sessions and a "mock conference" with the Senate committees of jurisdiction in order to develop a draft implementing bill together with the Administration and to make their concerns known to the Administration before it introduced the legislation formally.

After formal introduction of the implementing bill, the House committees of
(continued...)

[349](...continued)
jurisdiction had 45 legislative days to report the bill, and the House was required to vote on the bill within 15 legislative days after the measure was reported or discharged from the committees. Fifteen additional days were provided for Senate committee consideration (assuming the implementing bill was a revenue bill), and the Senate floor action was required within 15 additional days. Accordingly, the maximum period for Congressional consideration of an implementing bill from the date of introduction was 90 legislative days. Amendments to the legislation were not permitted once the bill was introduced; the committee and floor actions consisted of "up or down" votes on the bill as introduced.

. . . .

House amendment

Under Section 2105 of the House amendment to H.R. 3009, the President would be required, at least 90 days before entering into an agreement, to notify Congress of his intent to enter into the agreement. Section 2105(a) also would establish a new requirement that the President, within 60 days of signing an agreement, submit to Congress a preliminary list of existing laws that he considers would be required to bring the United States into compliance with agreement.

. . . .

Most of the remaining provisions are identical to the expired law. Specifically, section 2105(a) would require the President, after entering into agreement, to submit formally the draft agreement, the implementing legislation, and a statement of administrative action to Congress, and there would be no time limit to do so, but with the new requirement that the submission be made on a date on which both Houses are in session, The procedures of section 151 of the Trade Act of 1974 would then apply. Specifically, on the same day as the President formally submits the legislation, the bill would be introduced (by request) by the Majority Leaders of the House and the Senate. After formal introduction of the legislation, the House Committees of jurisdiction would have 45 legislative days to report the bill. The House would be required to vote on the bill within 15 legislative days after the measure was reported or discharged from the Committees. Fifteen additional days would be provided for Senate Committee consideration (assuming the implementing bill was a revenue bill), and Senate floor action would be required within 15 additional days. Accordingly, the maximum period for Congressional consideration of the implementing bill from the date of introduction would be 90 legislative days.

As with the expired provisions, once the bill has been formally introduced, no amendments would be permitted either in Committee or floor action, and a straight "up or down" vote would be required. Of course, before formal introduction, the bill could be developed by the Committees of jurisdiction together with the Administration during the informal Committee mark-up process.

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(continued...)

[349](...continued)
Senate amendment

The Senate Amendment is substantially similar to the House Bill, with the following exception:

Reporting requirements. Section 2105(a)(1)(A)(ii) requires the President to transmit to the House Ways and Means Committee and the Senate Finance Committee the notification and report described in section 2104(d)(3)(A) regarding changes to U.S. trade remedy laws.

. . . .

Conference agreement

The Senate recedes to the House amendment with several modifications.

H.R. REP. NO. 107-624, at 166-68 (2002).

The Senate Finance Committee report on the Trade Act of 2002 states with regard to the notification and submission process:

Section 5. Implementation of trade agreements

Summary

Section 5 of the bill describes the procedures to be followed for a trade agreement to enter into force with respect to the United States. It sets forth the documentation that the President must transmit to Congress to enable Congress to make a fully informed decision as to whether to approve a trade agreement. It then sets forth certain conditions under which a trade agreement implementing bill's eligibility for consideration under trade authorities procedures may be withdrawn. Finally, it affirms that the provisions for withdrawal of trade authorities procedures contained here and elsewhere in the bill are adopted pursuant to the constitutional authority of each House of Congress to determine the rules of its proceedings and to change those rules as it deems appropriate.

Section 5(a). In general

The information that the President must provide to Congress in connection with a proposed trade agreement is described in section 5(a). The requirement set out here complements the various requirements that the President consult with Congress during the course of an agreement's negotiation. Consultation during negotiation, combined with a complete accounting after negotiation, should enable Congress to participate in the trade policymaking process to the fullest extent of its constitutional authority.

At least 90 days before entering into a trade agreement subject to this bill, the President must notify Congress of his intention to enter into the agreement and publish notice of that intention in the Federal Register. Also at this time, the President must

(continued...)

[349](...continued)
transmit to the House Ways and Means Committee and the Senate Finance Committee the notification and report (described in section 4(d)(3) of the bill) concerning proposed changes to U.S. trade remedy laws.

Within 60 days after entering into the agreement, the President must transmit to Congress a description of changes to U.S. law he believes would be necessary to bring the United States into compliance with the agreement. This requirement is in addition to the notification and report concerning proposed changes to trade remedy laws to be transmitted before entering into the agreement. That is, the description of necessary changes to U.S. law transmitted after entering into the agreement, must address all changes to U.S. law, not only changes to trade remedy laws.

Next, the President must transmit to Congress (1) the final legal text of the agreement, (2) a draft bill to implement the agreement, (3) a statement of administrative action proposed to implement the agreement, and (4) certain supporting information (described in greater detail, below). There is no deadline for this transmittal. However, it must be made on a date on which both Houses of Congress are in session.

It is the expectation of the Committee that, for any agreement subject to trade authorities procedures under the present bill, the draft implementing bill and statement of administrative action will be developed by the President in close collaboration with the Committees of jurisdiction in both Houses of Congress. This has been the practice under prior fast track legislation. Because an implementing bill subject to trade authorities procedures is not subject to amendment, cooperation between the executive branch and the Committees of jurisdiction prior to the bill's introduction is critical to protect congressional prerogatives in the development of legislation. In addition to such cooperation, the Committee expects that other past practices — such as hearings, informal markups, and informal conferences between House and Senate Committees of jurisdiction — will precede formal transmittal of a trade agreement, draft implementing bill, and supporting documentation to Congress. To ensure that the legislative and executive branches have adequate time to complete these pre-transmittal processes, the bill establishes no deadline for transmittal. It simply provides, in section 5(a)(1)(C), that this is to happen "after entering into the agreement."

The supporting information that the President must transmit to Congress, along with the agreement, draft implementing bill, and statement of administrative action, is as follows:

• An explanation as to how the bill and proposed administrative action will change or affect existing law.

• A statement asserting that the agreement makes progress in achieving the applicable purposes, policies, and objectives set forth in section 2 of the bill, and an explanation of how and to what extent it does so. This should be a detailed statement, addressing each of the applicable purposes, policies, and objectives in section 2 (recognizing that there may be certain purposes, policies, and objectives that are not applicable).

(continued...)

[349](...continued)

• A statement of whether and how the agreement changes provisions of previously negotiated agreements.

• A statement of how the agreement serves the interests of U.S. commerce.

• A statement of how the draft implementing bill meets the requirements for application of trade authorities procedures. Section 3(b)(3) of the bill provides that the special "fast track" rules contained in section 151 of the Trade Act of 1974 — referred to in this bill as "trade authorities procedures" — apply to Congress's consideration of trade agreement implementing bills that contain certain provisions. As explained above, such bills must (1) approve the underlying agreement and the proposed statement of administrative action, and (2) contain changes to existing law necessary or appropriate to implement the underlying agreement. The supporting information accompanying transmittal of the bill must explain how the bill meets each of these requirements. In particular, it is important that the President explain his reasons for believing that the changes to existing law contained in the bill are necessary or appropriate to implement the agreement.

• A statement of how and to what extent the agreement makes progress in achieving the applicable priorities set forth in section 2(c) of the bill.

• A response to any findings by the Chairmen and Ranking Members of the Finance and Ways and Means Committees that proposed amendments to U.S. trade remedies laws are inconsistent with the purposes, policies, priorities, and objectives (in section 2(c)(9) of the bill) to preserve the ability of the United States to enforce those laws rigorously, and to avoid agreements that lessen the effectiveness of domestic and international dumping, subsidies, and safeguards disciplines. As discussed above, section 4(d)(3) of the bill requires the President, at least 90 days before concluding an agreement, to notify the Finance and Ways and Means Committees of any changes to U.S. trade remedy laws that may be necessary to implement the agreement. He also must explain his reasons for believing that these changes will not contravene the purposes, policies, priorities, and objectives in section 2(c)(9) of the bill. This notification is followed by a report by the Chairmen and Ranking Members of the two Committees. To the extent that any of these reports (including separate views of the Chairman and Ranking Member, where there is a lack of consensus) disagree with the President's assessment, the President must transmit a statement responding to the disagreeing views. His statement should address the arguments of the Member or Members who believe that the proposed changes to U.S. trade remedy laws will weaken those laws.

S. REP. NO. 107-139, at 40-59 (2002).

The House Ways and Means Committee report on the Trade Act of 2002 states with regard to the notification and submission process:

7. SECTION 5: IMPLEMENTATION OF TRADE AGREEMENTS

(continued...)

[349](...continued)
Present/expired law

Before entering into the draft agreement, the President was required to give Congress 90 days advance notice (120 days for the Uruguay Round) to provide an opportunity for revision before signature. After entering into the agreement, the President was required to submit formally the draft agreement, implementing legislation, and a statement of administrative action. Once the bill was formally introduced, there was no opportunity to amend any portion of the bill--whether on the floor or in committee. Consequently, before the formal introduction took place, the committees of jurisdiction would hold hearings, "unofficial" or "informal" mark-up sessions and a "mock conference" with the Senate committees of jurisdiction in order to develop a draft implementing bill together with the Administration and to make their concerns known to the Administration before it introduced the legislation formally.

After formal introduction of the implementing bill, the House committees of jurisdiction had 45 legislative days to report the bill, and the House was required to vote on the bill within 15 legislative days after the measure was reported or discharged from the committees. Fifteen additional days were provided for Senate committee consideration (assuming the implementing bill was a revenue bill), and the Senate floor action was required within 15 additional days. Accordingly, the maximum period for Congressional consideration of an implementing bill from the date of introduction was 90 legislative days. Amendments to the legislation were not permitted once the bill was introduced; the committee and floor actions consisted of "up or down" votes on the bill as introduced.

. . . .

Explanation of provision

Under section 5(a) of H.R. 3005, as amended, the President would be required, at least 90 days before entering into an agreement, to notify Congress of his intent to enter into the agreement. Section 5(a) also would establish a new requirement that the President, within 60 days of signing an agreement, submit to Congress a preliminary list of existing laws that he considers would be required to bring the United States into compliance with agreement.

Section 5(b) would provide that trade promotion authority would not apply if both Houses separately agree to a procedural disapproval resolution within any 60-day period stating that the Administration failed to notify or consult with Congress.

Most of the remaining provisions are identical to the expired law. Specifically, section 5(a) would require the President, after entering into agreement, to submit formally the draft agreement, the implementing legislation, and a statement of administrative action to Congress, and there would be no time limit to do so. The procedures of section 151 of the Trade Act of 1974 would then apply. Specifically, on the same day as the President formally submits the legislation, the bill would be introduced (by request) by the Majority Leaders of the House and the Senate. After

(continued...)

[349](...continued)
formal introduction of the legislation, the House Committees of jurisdiction would have 45 legislative days to report the bill. The House would be required to vote on the bill within 15 legislative days after the measure was reported or discharged from the Committees. Fifteen additional days would be provided for Senate Committee consideration (assuming the implementing bill was a revenue bill), and Senate floor action would be required within 15 additional days. Accordingly, the maximum period for Congressional consideration of the implementing bill from the date of introduction would be 90 legislative days.

As with the expired provisions, once the bill has been formally introduced, no amendments would be permitted either in Committee or floor action, and a straight "up or down" vote would be required. Of course, before formal introduction, the bill could be developed by the Committees of jurisdiction together with the Administration during the informal Committee mark-up process.

. . . .

Reason for change

The procedures established under H.R. 3005, as amended, are mainly identical to those of the 1988 Act, with considerable additional consultation requirements. The Committee believes that these procedures will permit Congress to participate meaningfully in the drafting of the implementing bill.

As with the past provision, there would be no deadline for the submission of the legislation by the President once an agreement has been concluded, because the Committee intends that the Committees and the Administration have as much time as necessary to consider the content of the legislation. After the formal introduction, certain deadlines are appropriate because Congress has already conducted its process informally. The Committee believes that the informal mark-up process conducted before formal submission of the implementing bill provides the Congress, the public, and the private sector ample opportunity to participate in the development of the proposed legislation and to provide their views to the Administration. The Committee encourages and expects the Administration to continue its practice of considering carefully the comments made during this informal process and of making no changes to the legislation beyond those recommended by the Committees. If the Administration must make changes to reconcile differing recommendations by the relevant Committees, the Committee expects that the Administration will continue to consult with the affected Committees.

H.R. 3005, as amended, would add a new procedural step requiring that the President submit to Congress, within 60 days of signing an agreement, a preliminary list of existing laws that he considers would be required to bring the United States into compliance with the agreement. This requirement has been added out of concern that in the past, Congress has not always been timely apprised of the changes to U.S. law that the Administration believes are required. This information is of vital importance to the Committee in its deliberations.

(continued...)

§ 2105(a)(2) **(2) SUPPORTING INFORMATION. — The supporting information required under paragraph (1)(C)(iii)[350] consists of —**

§ 2105(a)(2)(A) **(A) an explanation as to how the implementing bill[351] and proposed administrative action will change or affect existing law; and**

§ 2105(a)(2)(B) **(B) a statement —**

§ 2105(a)(2)(B)(i) **(i) asserting that the agreement makes progress in achieving the applicable purposes, policies, priorities, and objectives of this title;[352] and**

§ 2105(a)(2)(B)(ii) **(ii) setting forth the reasons of the President regarding —**

§ 2105(a)(2)(B)(ii)(I) **(I) how and to what extent the agreement makes progress in achieving the applicable purposes,**

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[349](...continued)
H.R. REP. NO. 107-249, at 36-44 (2002).

Senators have debated how to implement the notification and submission process in practice. *Compare* S. REP. NO. 109-364, at 51-52 (Additional Views of Senator Baucus), *with* S. REP. NO. 109-364, at 5 (Oman); S. REP. NO. 109-128, at 7-8 (DR-CAFTA); S. REP. NO. 108-316, at 3-4 (Australia).

[350] *See supra* p. 258.

[351] For the purposes of this title, section 2103(b)(3)(A) (*see supra* p. 202) defines "implementing bill" to mean a bill that contains provisions (described in subparagraph 2103(b)(3)(B) (*see supra* p. 205)) approving or implementing a trade agreement entered into under section 2103(b) (*see supra* p. 185). Section 2103(b)(3)(A) (*see supra* p. 202) applies the trade authorities procedures of section 151 of the Trade Act of 1974 (*see supra* p. 47) to such an implementing bill.

[352] For objectives of this title, see section 2102. *See supra* note 245, p. 189.

policies, and objectives referred to in clause (i);[353]

§ 2105(a)(2)(B)(ii)(II) **(II) whether and how the agreement changes provisions of an agreement previously negotiated;**

§ 2105(a)(2)(B)(ii)(III) **(III) how the agreement serves the interests of United States commerce;**

§ 2105(a)(2)(B)(ii)(IV) **(IV) how the implementing bill[354] meets the standards set forth in section 2103(b)(3);[355] and**

§ 2105(a)(2)(B)(ii)(V) **(V) how and to what extent the agreement makes progress in achieving the applicable purposes, policies, and objectives referred to in section 2102(c)[356] regarding the**

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[353] *See supra* p. 265.

[354] For the purposes of this title, section 2103(b)(3)(A) (*see supra* p. 202) defines "implementing bill" to mean a bill that contains provisions (described in subparagraph 2103(b)(3)(B) (*see supra* p. 205)) approving or implementing a trade agreement entered into under section 2103(b) (*see supra* p. 185). Section 2103(b)(3)(A) (*see supra* p. 202) applies the trade authorities procedures of section 151 of the Trade Act of 1974 (*see supra* p. 47) to such an implementing bill.

[355] *See supra* p. 202.

[356] Section 2102(c) is codified at 19 U.S.C. § 3802(c), and states:

(c) PROMOTION OF CERTAIN PRIORITIES. — In order to address and maintain United States competitiveness in the global economy, the President shall —

(1) seek greater cooperation between the WTO and the ILO;

(2) seek to establish consultative mechanisms among parties to trade agreements to strengthen the capacity of United States trading partners to promote respect for core labor standards (as defined in section 2113(6) [19 U.S.C. § 3813(6)]) and to promote compliance with ILO Convention No. 182 Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor, and report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate on the content and operation of such mechanisms;

(continued...)

[356](...continued)

(3) seek to establish consultative mechanisms among parties to trade agreements to strengthen the capacity of United States trading partners to develop and implement standards for the protection of the environment and human health based on sound science, and report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate on the content and operation of such mechanisms;

(4) conduct environmental reviews of future trade and investment agreements, consistent with Executive Order 13141 of November 16, 1999 [19 U.S.C. § 2112 note], and its relevant guidelines, and report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate on such reviews;

(5) review the impact of future trade agreements on United States employment, including labor markets, modeled after Executive Order 13141 [19 U.S.C. § 2112 note] to the extent appropriate in establishing procedures and criteria, report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate on such review, and make that report available to the public;

(6) take into account other legitimate United States domestic objectives including, but not limited to, the protection of legitimate health or safety, essential security, and consumer interests and the law and regulations related thereto;

(7) direct the Secretary of Labor to consult with any country seeking a trade agreement with the United States concerning that country's labor laws and provide technical assistance to that country if needed;

(8) in connection with any trade negotiations entered into under this Act, submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a meaningful labor rights report of the country, or countries, with respect to which the President is negotiating, on a time frame determined in accordance with section 2107(b)(2)(E) [19 U.S.C. § 3807(b)(2)(E)];

(9) with respect to any trade agreement which the President seeks to implement under trade authorities procedures, submit to the Congress a report describing the extent to which the country or countries that are parties to the agreement have in effect laws governing exploitative child labor;

(10) continue to promote consideration of multilateral environmental agreements and consult with parties to such agreements regarding the consistency of any such agreement that includes trade measures with existing environmental exceptions under Article XX of the GATT 1994;

(11) report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate, not later than 12

(continued...)

promotion of certain priorities.

§ 2105(a)(3)

(3) RECIPROCAL BENEFITS. — In order to ensure that a foreign country that is not a party to a trade agreement entered into under section 2103(b)[357] does not receive benefits under the agreement unless the country is also subject to the obligations under the agreement, the implementing bill[358] submitted with respect to the agreement shall provide that the benefits and obligations under the agreement apply only to the parties to the agreement, if such application is consistent with the terms of the agreement. The implementing bill may also provide that the benefits and obligations under the agreement do not apply uniformly to all parties to the agreement, if such application is consistent with the terms of

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[356](...continued)

months after the imposition of a penalty or remedy by the United States permitted by a trade agreement to which this title applies, on the effectiveness of the penalty or remedy applied under United States law in enforcing United States rights under the trade agreement; and

(12) seek to establish consultative mechanisms among parties to trade agreements to examine the trade consequences of significant and unanticipated currency movements and to scrutinize whether a foreign government engaged in a pattern of manipulating its currency to promote a competitive advantage in international trade.

The report under paragraph (11) shall address whether the penalty or remedy was effective in changing the behavior of the targeted party and whether the penalty or remedy had any adverse impact on parties or interests not party to the dispute.

19 U.S.C. § 3802(c).

[357] Section 2103(b) addresses "Agreements Regarding Tariff and Nontariff Barriers." *See supra* p. 185.

[358] For the purposes of this title, section 2103(b)(3)(A) (*see supra* p. 202) defines "implementing bill" to mean a bill that contains provisions (described in subparagraph 2103(b)(3)(B) (*see supra* p. 205)) approving or implementing a trade agreement entered into under section 2103(b) (*see supra* p. 185). Section 2103(b)(3)(A) (*see supra* p. 202) applies the trade authorities procedures of section 151 of the Trade Act of 1974 (*see supra* p. 47) to such an implementing bill.

the agreement.[359]

§ 2105(a)(4) **(4) DISCLOSURE OF COMMITMENTS. — Any agreement or other understanding with a foreign government or governments (whether oral or in writing) that —**

§ 2105(a)(4)(A) **(A) relates to a trade agreement with respect to which the Congress enacts an implementing bill**[360] **under trade authorities procedures,**[361] **and**

§ 2105(a)(4)(B) **(B) is not disclosed to the Congress before an implementing bill**[362] **with respect to that agreement is introduced in either House of Congress, shall not be considered to be**

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[359] The Senate Finance Committee report on the Trade Act of 2002 states with regard to reciprocal benefits:

> Section 5(a) contains two safeguards to ensure that a bill implementing a trade agreement does not do things it was not intended to do. First, to ensure that a trade agreement does not inadvertently bestow benefits on countries not party to the agreement, section 5(a)(3) requires that an implementing bill provide explicitly that benefits and obligations under the agreement apply only to the parties to the agreement. This section also provides that an implementing bill may treat different trade agreement partners differently, if such differential treatment is consistent with the underlying agreement.

S. REP. NO. 107-139, at 52 (2002).

[360] For the purposes of this title, section 2103(b)(3)(A) (*see supra* p. 202) defines "implementing bill" to mean a bill that contains provisions (described in subparagraph 2103(b)(3)(B) (*see supra* p. 205)) approving or implementing a trade agreement entered into under section 2103(b) (*see supra* p. 185). Section 2103(b)(3)(A) (*see supra* p. 202) applies the trade authorities procedures of section 151 of the Trade Act of 1974 (*see supra* p. 47) to such an implementing bill.

[361] Section 2103(b)(3)(A) (*see supra* p. 202) defines "trade authorities procedures" to mean the provisions of section 151 of the Trade Act of 1974 (*see supra* p. 47).

[362] For the purposes of this title, section 2103(b)(3)(A) (*see supra* p. 202) defines "implementing bill" to mean a bill that contains provisions (described in subparagraph 2103(b)(3)(B) (*see supra* p. 205)) approving or implementing a trade agreement entered into under section 2103(b) (*see supra* p. 185). Section 2103(b)(3)(A) (*see supra* p. 202) applies the trade authorities procedures of section 151 of the Trade Act of 1974 (*see supra* p. 47) to such an implementing bill.

part of the agreement approved by the Congress and shall have no force and effect under United States law or in any dispute settlement body.[363]

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[363] The joint statement of managers accompanying the conference report on the Trade Act of 2002 states with regard to the disclosure of commitments:

> *Senate amendment*
>
> The Senate Amendment is substantially similar to the House Bill, with the following exception:
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> . . . .
>
> *Disclosure Requirements.* Section 2105(a)(4) of the Senate bill specifies that any trade agreement or understanding with a foreign government (oral or written) not disclosed to Congress will not be considered part of trade agreement approved by Congress and shall have no effect under U.S. law or in any dispute settlement body.
>
> . . . .
>
> *Conference agreement*
>
> The Senate recedes to the House amendment with several modifications. The Conferees agree to section 2105(a)(4) of the Senate amendment, which specifies that any trade agreement or understanding with a foreign government (oral or written) not disclosed to Congress will not be considered part of trade agreement approved by Congress and shall have no effect under U.S. law or in any dispute settlement body.

H.R. REP. NO. 107-624, at 167-68 (2002).

The Senate Finance Committee report on the Trade Act of 2002 states with regard to the disclosure of commitments:

> Section 5(a) contains two safeguards to ensure that a bill implementing a trade agreement does not do things it was not intended to do. . . .
>
> Second, section 5(a)(4) provides that in enacting a trade agreement implementing bill, Congress does not approve any side agreements between governments that have not been disclosed to Congress. In other words, Congress's approval of a trade agreement is not an approval of any undisclosed deals that may be ancillary to that agreement. It is an approval only of those terms that have been expressly identified to Congress.

S. REP. NO. 107-139, at 52-53 (2002).

§ 2105(b) **(b) LIMITATIONS ON TRADE AUTHORITIES PROCEDURES.[364] —**

§ 2105(b)(1) **(1) FOR LACK OF NOTICE OR CONSULTATIONS. —**

§ 2105(b)(1)(A) **(A) IN GENERAL. — The trade authorities procedures[365] shall not apply to any implementing bill[366] submitted with respect to a trade agreement or trade agreements entered into under section 2103(b)[367] if during the 60-day period beginning on the date that one House of Congress agrees to a procedural disapproval resolution[368] for lack of notice or consultations with respect to such trade agreement or agreements, the other House separately agrees to a procedural disapproval resolution with respect to such trade agreement or agreements.**

§ 2105(b)(1)(B) **(B) PROCEDURAL DISAPPROVAL RESOLUTION. —**

§ 2105(b)(1)(B)(i) **(i) For purposes of this paragraph, the term "procedural disapproval resolution" means a resolution of either House of Congress, the sole matter after the resolving clause of which is as follows: "That the President has failed or refused to notify or consult in**

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[364] Section 2103(b)(3)(A) (*see supra* p. 202) defines "trade authorities procedures" to mean the provisions of section 151 of the Trade Act of 1974 (*see supra* p. 47).

[365] Section 2103(b)(3)(A) (*see supra* p. 202) defines "trade authorities procedures" to mean the provisions of section 151 of the Trade Act of 1974 (*see supra* p. 47).

[366] For the purposes of this title, section 2103(b)(3)(A) (*see supra* p. 202) defines "implementing bill" to mean a bill that contains provisions (described in subparagraph 2103(b)(3)(B) (*see supra* p. 205)) approving or implementing a trade agreement entered into under section 2103(b) (*see supra* p. 185). Section 2103(b)(3)(A) (*see supra* p. 202) applies the trade authorities procedures of section 151 of the Trade Act of 1974 (*see supra* p. 47) to such an implementing bill.

[367] Section 2103(b) addresses "Agreements Regarding Tariff and Nontariff Barriers." *See supra* p. 185.

[368] Section 2105(b)(1)(B)(i) defines "procedural disapproval resolution." *See infra* p. 271.

accordance with the Bipartisan Trade Promotion Authority Act of 2002[369] on negotiations with respect to _____ and, therefore, the trade authorities procedures[370] under that Act shall not apply to any implementing bill[371] submitted with respect to such trade agreement or agreements.", with the blank space being filled with a description of the trade agreement or agreements with respect to which the President is considered to have failed or refused to notify or consult.[372]

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[369] Section 2105(b)(1)(B)(ii) defines "failed or refused to notify or consult in accordance with the Bipartisan Trade Promotion Authority Act of 2002." *See infra* p. 275.

[370] Section 2103(b)(3)(A) (*see supra* p. 202) defines "trade authorities procedures" to mean the provisions of section 151 of the Trade Act of 1974 (*see supra* p. 47).

[371] For the purposes of this title, section 2103(b)(3)(A) (*see supra* p. 202) defines "implementing bill" to mean a bill that contains provisions (described in subparagraph 2103(b)(3)(B) (*see supra* p. 205)) approving or implementing a trade agreement entered into under section 2103(b) (*see supra* p. 185). Section 2103(b)(3)(A) (*see supra* p. 202) applies the trade authorities procedures of section 151 of the Trade Act of 1974 (*see supra* p. 47) to such an implementing bill.

[372] Section 2105(b)(1)(B)(ii) defines "failed or refused to notify or consult in accordance with the Bipartisan Trade Promotion Authority Act of 2002." *See infra* p. 275.

The joint statement of managers accompanying the conference report on the Trade Act of 2002 states with regard to procedural disapproval resolutions:

House amendment

. . . .

Section 2105(b) would provide that trade promotion authority would not apply if both Houses separately agree to a procedural disapproval resolution within any 60-day period stating that the Administration failed to notify or consult with Congress, which is defined as failing or refusing to consult in accordance with section 2104 or 2105, failing to develop or meet guidelines under section 2107(b), failure to meet with the Congressional Oversight Group, or the agreement fails to make progress in achieving the purposes[,] policies, priorities, and objectives of the Act. In a change from the expired law, such a resolution may be introduced by any Member of the House or Senate. Only one such privileged resolution would be permitted to be considered per trade agreement per Congress.

(continued...)

[372](...continued)

. . . .

Senate amendment

The Senate Amendment is substantially similar to the House Bill, with the following exception:

. . . .

Senate Procedures. Section 2105(b)(1)(C)(i)(II) provides that any Member of the Senate may introduce a procedural disapproval resolution, and that that resolution will be referred to the Senate Finance Committee. Section 2105(b)(1)(C)(iv) provides that the Senate may not consider a disapproval resolution that has not been reported by the Senate Finance Committee.

Conference agreement

The Senate recedes to the House amendment with several modifications. . . . The Conferees also agree to sections 2105(b)(1)(C)(i)(II) and (b)(1)(C)(iv) of the Senate amendment, which applies the same procedures for consideration of bills in the Senate as for the House.

H.R. REP. NO. 107-624, at 166-68 (2002).

The Senate Finance Committee report on the Trade Act of 2002 states with regard to procedural disapproval resolutions:

Section 5(b). Limitations on trade authorities procedures

Section 5(b) of the bill sets forth two circumstances under which the trade authorities procedures described in section 3(b)(3) of the bill will not apply to trade agreement implementing legislation. First, trade authorities procedures will not apply to a particular agreement if a procedural disapproval resolution has been adopted with respect to that agreement. Second, trade authorities procedures will not apply if the Secretary of Commerce fails to transmit to Congress, by December 31, 2002, a report identifying a strategy for the United States to redress past instances in which WTO dispute settlement panels have effectively added to obligations or diminished rights of the United States.

A disapproval resolution may be introduced at any time by any Member of either House. The language of the resolution is prescribed by section 5(b)(1)(B) of the bill. It withdraws application of trade authorities procedures to any implementing bill submitted with respect to a trade agreement or agreements as to which the President has failed or refused to notify or consult as required elsewhere in the bill. The Member introducing the resolution must identify in the resolution the agreement or agreements as to which that Member believes the President has failed or refused to notify or consult with Congress.

(continued...)

[372](...continued)

The term "failed or refused to notify or consult in accordance with the Bipartisan Trade Promotion Authority Act of 2002" is defined to make clear that the President has not met his obligations simply by going through the formalities of consultations. Section 5(b)(1)(B)(ii) establishes that the President may be considered to have failed to consult even if, from time to time, he has met with congressional representatives concerning a trade agreement.

Specifically, this section provides that the President has failed or refused to notify or consult if:

- The President has failed to comply with the requirements of sections 4 or 5 of this bill;

- The U.S. Trade Representative has failed to develop or meet the consultation guidelines required by section 7(b) of the bill;

- The President has not met with the Congressional Oversight Group established under section 7(a), pursuant to a request made under section 7(c); or

- The agreement or agreements at issue fail to make progress in achieving the purposes, policies, priorities, and objectives of the present bill.

Special rules apply to congressional consideration of a disapproval resolution. Such a resolution is referred to the Committee on Ways and Means and the Committee on Rules in the House of Representatives and to the Committee on Finance in the Senate. A disapproval resolution may not be amended. Such a resolution may not be considered on the floor of the House unless it has been reported by the Committee on Ways and Means and the Committee on Rules. It may not be considered on the floor of the Senate unless it has been reported by the Committee on Finance. In other words, a disapproval resolution cannot be forced to the floor through a discharge of the Committee(s) to which it has been referred.

If a disapproval resolution is reported by the Committee or (in the House) Committees to which it has been referred, then it is eligible for consideration under fast track rules in the Chamber to which it has been reported. For this purpose, the fast track rules set forth in section 152(d) and (e) of the Trade Act of 1974 apply. Under those rules, a motion to proceed to consideration of a qualifying resolution is considered privileged (in the Senate) or highly privileged (in the House), and time for debate is limited. However, a disapproval resolution with respect to a particular agreement may be considered under these rules in a given Chamber only once per Congress.

For trade authorities procedures to be withdrawn pursuant to a disapproval resolution, both Houses of Congress must adopt the resolution within 60 days of one another.

S. REP. NO. 107-139, at 53-54 (2002).

(continued...)

§ 2105(b)(1)(B)(ii) **(ii) For purposes of clause (i),[373] the President has "failed or refused to notify or consult in accordance with the Bipartisan Trade Promotion Authority Act of 2002" on negotiations with respect to a trade agreement or trade agreements if —**

§ 2105(b)(1)(B)(ii)(I) **(I) the President has failed or refused to consult (as the case may be) in accordance with section 2104[374] or 2105[375] with respect to the negotiations, agreement, or agreements;**

§ 2105(b)(1)(B)(ii)(II) **(II) guidelines under section 2107(b)[376] have not**

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[372](...continued)

The House Ways and Means Committee report on the Trade Act of 2002 states with regard to procedural disapproval resolutions:

> Section 5(b) would provide that trade promotion authority would not apply if both Houses separately agree to a procedural disapproval resolution within any 60-day period stating that the Administration failed to notify or consult with Congress.

H.R. REP. NO. 107-249, at 42 (2002).

[373] *See supra* p. 271.

[374] *See supra* p. 223.

[375] This section.

[376] Section 2107(b) is codified as amended at 19 U.S.C. § 3807(b), and states:

> (b) GUIDELINES. —
>
> (1) PURPOSE AND REVISION. — The United States Trade Representative, in consultation with the chairmen and ranking minority members of the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate —
>
> (A) shall, within 120 days after the date of the enactment of this Act [enacted Aug. 6, 2002], develop written guidelines to facilitate the useful and timely exchange of information between the Trade Representative and the Congressional Oversight Group convened under this section; and

(continued...)

been developed or met with respect to the negotiations, agreement, or agreements;

§ 2105(b)(1)(B)(ii)(III)

(III) the President has not met with the Congressional Oversight Group pursuant to a request made under section 2107(c)[377] with respect to the negotiations, agreement, or agreements; or

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[376](...continued)

(B) may make such revisions to the guidelines as may be necessary from time to time.

(2) CONTENT. — The guidelines developed under paragraph (1) shall provide for, among other things —

(A) regular, detailed briefings of the Congressional Oversight Group regarding negotiating objectives, including the promotion of certain priorities referred to in section 2102(c) [19 U.S.C. § 3802(c)], and positions and the status of the applicable negotiations, beginning as soon as practicable after the Congressional Oversight Group is convened, with more frequent briefings as trade negotiations enter the final stage;

(B) access by members of the Congressional Oversight Group, and staff with proper security clearances, to pertinent documents relating to the negotiations, including classified materials;

(C) the closest practicable coordination between the Trade Representative and the Congressional Oversight Group at all critical periods during the negotiations, including at negotiation sites;

(D) after the applicable trade agreement is concluded, consultation regarding ongoing compliance and enforcement of negotiated commitments under the trade agreement; and

(E) the time frame for submitting the report required under section 2102(c)(8) [19 U.S.C. § 3802(c)(8)].

19 U.S.C. § 3807(b).

[377] Section 2107(c) is codified as amended at 19 U.S.C. § 3807(c), and states:

(c) REQUEST FOR MEETING. — Upon the request of a majority of the Congressional Oversight Group, the President shall meet with the Congressional Oversight Group before initiating negotiations with respect to a trade agreement, or at any other time concerning the negotiations.

19 U.S.C. § 3807(c).

§ 2105(b)(1)(B)(ii)(IV) **(IV) the agreement or agreements fail to make progress in achieving the purposes, policies, priorities, and objectives of this title.**

§ 2105(b)(2) **(2) PROCEDURES FOR CONSIDERING RESOLUTIONS. —**

§ 2105(b)(2)(A) **(A) Procedural disapproval resolutions[378] —**

§ 2105(b)(2)(A)(i) **(i) in the House of Representatives —**

§ 2105(b)(2)(A)(i)(I) **(I) may be introduced by any Member of the House;**

§ 2105(b)(2)(A)(i)(II) **(II) shall be referred to the Committee on Ways and Means and, in addition, to the Committee on Rules; and**

§ 2105(b)(2)(A)(i)(III) **(III) may not be amended by either Committee; and**

§ 2105(b)(2)(A)(ii) **(ii) in the Senate —**

§ 2105(b)(2)(A)(ii)(I) **(I) may be introduced by any Member of the Senate;**

§ 2105(b)(2)(A)(ii)(II) **(II) shall be referred to the Committee on Finance; and**

§ 2105(b)(2)(A)(ii)(III) **(III) may not be amended.**

[378] Section 2105(b)(1)(B)(i) defines "procedural disapproval resolution." *See supra* p. 271.

§ 2105(b)(2)(B) **(B) The provisions of section 152(d)[379] and (e)[380] of the Trade Act of 1974 (19 U.S.C. 2192(d) and (e)) (relating to the floor consideration of certain resolutions in the House and Senate) apply to a procedural disapproval resolution[381] introduced with respect to a trade agreement if no other procedural disapproval resolution with respect to that trade agreement has previously been reported in that House of Congress by the Committee on Ways and Means or the Committee on Finance, as the case may be, and if no resolution described in section 2104(d)(3)(C)(ii)[382] with respect to that trade agreement has been reported in that House of Congress by the Committee on Ways and Means or the Committee on Finance, as the case may be, pursuant to the procedures set forth in clauses (iii)[383] through (vi)[384] of such section 2104(d)(3)(C).[385]**

§ 2105(b)(2)(C) **(C) It is not in order for the House of Representatives to consider any procedural disapproval resolution[386] not reported by the Committee on Ways and Means and, in addition, by the Committee on Rules.**

§ 2105(b)(2)(D) **(D) It is not in order for the Senate to consider any**

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[379] *See supra* p. 140.

[380] *See supra* p. 142.

[381] Section 2105(b)(1)(B)(i) defines "procedural disapproval resolution." *See supra* p. 271.

[382] *See supra* p. 248.

[383] *See supra* p. 248.

[384] *See supra* p. 249.

[385] *See supra* p. 246.

[386] Section 2105(b)(1)(B)(i) defines "procedural disapproval resolution." *See supra* p. 271.

procedural disapproval resolution[387] not reported by the Committee on Finance.

§ 2105(b)(3)

(3) FOR FAILURE TO MEET OTHER REQUIREMENTS. — Not later than December 31, 2002, the Secretary of Commerce, in consultation with the Secretary of State, the Secretary of the Treasury, the Attorney General, and the United States Trade Representative, shall transmit to the Congress a report setting forth the strategy of the executive branch to address concerns of the Congress regarding whether dispute settlement panels and the Appellate Body of the WTO have added to obligations, or diminished rights, of the United States, as described

[387] Section 2105(b)(1)(B)(i) defines "procedural disapproval resolution." *See supra* p. 271.

in section 2101(b)(3).[388] Trade authorities procedures[389] shall not apply to any implementing bill[390] with respect to an agreement negotiated under the auspices of the WTO unless the Secretary of Commerce has issued such report in a timely manner.[391]

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[388] Section 2101(b)(3) is codified as amended at 19 U.S.C. § 3801(b)(3) (2003), and states:

> (b) FINDINGS. — The Congress makes the following findings:
>
> . . . .
>
> (3) Support for continued trade expansion requires that dispute settlement procedures under international trade agreements not add to or diminish the rights and obligations provided in such agreements. Therefore —
>
> (A) the recent pattern of decisions by dispute settlement panels of the WTO and the Appellate Body to impose obligations and restrictions on the use of antidumping, countervailing, and safeguard measures by WTO members under the Antidumping Agreement, the Agreement on Subsidies and Countervailing Measures, and the Agreement on Safeguards has raised concerns; and
>
> (B) the Congress is concerned that dispute settlement panels of the WTO and the Appellate Body appropriately apply the standard of review contained in Article 17.6 of the Antidumping Agreement, to provide deference to a permissible interpretation by a WTO member of provisions of that Agreement, and to the evaluation by a WTO member of the facts where that evaluation is unbiased and objective and the establishment of the facts is proper.

19 U.S.C. § 3801(b)(3).

[389] Section 2103(b)(3)(A) (*see supra* p. 202) defines "trade authorities procedures" to mean the provisions of section 151 of the Trade Act of 1974 (*see supra* p. 47).

[390] For the purposes of this title, section 2103(b)(3)(A) (*see supra* p. 202) defines "implementing bill" to mean a bill that contains provisions (described in subparagraph 2103(b)(3)(B) (*see supra* p. 205)) approving or implementing a trade agreement entered into under section 2103(b) (*see supra* p. 185). Section 2103(b)(3)(A) (*see supra* p. 202) applies the trade authorities procedures of section 151 of the Trade Act of 1974 (*see supra* p. 47) to such an implementing bill.

[391] In response to this requirement, on December 30, 2002, the Department of Commerce issued a 15-page paper. *See* INTERNATIONAL TRADE ADMINISTRATION, U.S. DEPARTMENT OF COMMERCE, EXECUTIVE BRANCH STRATEGY REGARDING WTO DISPUTE SETTLEMENT PANELS AND THE APPELLATE BODY: REPORT TO THE CONGRESS TRANSMITTED BY THE SECRETARY OF COMMERCE <http://www.ita.doc.gov/FinalDec31ReportCorrected.pdf>.

(continued...)

[391](...continued)

The joint statement of managers accompanying the conference report on the Trade Act of 2002 states with regard to the Commerce Department report:

> Finally, the Conferees agree to section 2105(b)(2) of the Senate amendment with modifications, which requires the Secretary of Commerce, in consultation with the Secretaries of State and Treasury, the Attorney General, and the United States Trade Representative, to transmit to Congress a report setting forth the strategy of the executive branch to address concerns of Congress regarding whether dispute settlement panels and the Appellate Body of the WTO have added to obligations or diminished rights of the United States, as described in section 2101(b)(3). Trade authorities procedures shall not apply to any implementing bill with respect to an agreement negotiated under the auspices of the WTO unless the Secretary of Commerce has issued such report prior to December 31, 2002.

H.R. REP. NO. 107-624, at 168 (2002).

The Senate Finance Committee report on the Trade Act of 2002 states with regard to the Commerce Department report:

> *Section 5(b). Limitations on trade authorities procedures*
>
> Section 5(b) of the bill sets forth two circumstances under which the trade authorities procedures described in section 3(b)(3) of the bill will not apply to trade agreement implementing legislation. First, trade authorities procedures will not apply to a particular agreement if a procedural disapproval resolution has been adopted with respect to that agreement. Second, trade authorities procedures will not apply if the Secretary of Commerce fails to transmit to Congress, by December 31, 2002, a report identifying a strategy for the United States to redress past instances in which WTO dispute settlement panels have effectively added to obligations or diminished rights of the United States.
>
> . . . .
>
> In addition to adoption of a procedural disapproval resolution, section 5(b) provides for a second circumstance under which trade authorities procedures will not apply to proposed legislation implementing a trade agreement negotiated under the auspices of the WTO. This second circumstance is failure of the Secretary of Commerce to transmit to Congress, by December 31, 2002, a report setting forth a strategy for addressing certain adverse consequences to the United States stemming from a series of recent WTO dispute settlement decisions.
>
> The dispute settlement decisions at issue involve four cases in which other countries have challenged different aspects of U.S. antidumping, countervailing duty, and safeguards law. These are: (1) United States — Anti-Dumping Measures on Certain Hot-Rolled Steel Products from Japan ("the Hot-Rolled Steel case"); (2) United States — Imposition of Countervailing Duties on Certain Hot-Rolled Lead and Bismuth Carbon Steel Products Originating in the United Kingdom ("the UK Bar case"); (3)

(continued...)

§ 2105(c) **(c) RULES OF HOUSE OF REPRESENTATIVES AND SENATE. — Subsection (b)[392] of this section, section 2103(c),[393] and[394] section 2104(d)(3)(C)[395] are enacted by the Congress —**

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[391](...continued)
United States — Definitive Safeguard Measures on Imports of Wheat Gluten from the European Communities ("the Wheat Gluten case"); and (4) United States — Safeguard Measures on Imports of Fresh, Chilled or Frozen Lamb Meat from New Zealand and Australia ("the Lamb Meat case").

This is not an exhaustive list of dispute settlement decisions with which the Committee has concerns. However, the decisions in these cases highlight the concern that WTO dispute settlement may be weakening the ability of the United States to enforce trade remedy laws which Congress believed to be WTO-consistent when it approved application of the WTO Agreements to the United States. The particular ways in which these cases may have weakened the ability of the United States to enforce its trade remedy laws are summarized in the findings in section 1(b)(3) of the bill.

The consistent trend of panels and the Appellate Body upholding challenges to U.S. trade remedy laws suggests a systemic problem. Preserving the ability to respond promptly and effectively to unfair trade practices and to harmful import surges is critical to maintaining support in the United States for an open, rule-based trading system. To the extent that decisions in dispute settlement erode that ability, they may well weaken support for the system.

Given the seriousness of this problem, the bill directs the Secretary of Commerce to develop a comprehensive strategy for correcting instances in which dispute settlement panels and the Appellate Body have added to obligations or diminished rights of the United States, as described in section 1(b)(3). The strategy should identify ways to redress the weakening of trade remedy laws that resulted from the four cases noted above, as well as ways to ensure against further erosion in future cases. Because of the high priority attached to development of this strategy, submission of the strategy to Congress by December 31, 2002 is a condition for application of trade authorities procedures to any bill implementing a trade agreement negotiated under the auspices of the WTO.

S. REP. NO. 107-139, at 53-55 (2002).

[392] *See supra* p. 271.

[393] *See supra* p. 206.

[394] Section 2004(a)(18) of the Miscellaneous Trade and Technical Corrections Act of 2004, Pub. L. No. 108-429, 118 Stat. 2434, 2591 (Dec. 3, 2004), struck "aand" and inserted "and" here.

[395] *See supra* p. 246.

§ 2105(c)(1) **(1) as an exercise of the rulemaking power[396] of the House of Representatives and the Senate, respectively, and as such are deemed a part of the rules of each House, respectively, and such procedures supersede other rules only to the extent that they are inconsistent with such other rules; and**

§ 2105(c)(2) **(2) with the full recognition of the constitutional right of either House to change the rules (so far as relating to the procedures of that House) at any time, in the same manner, and to the same extent as any other rule of that House.[397]**

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[396] The Constitution provides: "Each House may determine the Rules of its Proceedings . . . ." U.S. CONST. art. I, § 5, cl. 2. The provisions of section 151(a) are thus a specific statement of a more general proposition. *See generally* JOHNNY H. KILLIAN & GEORGE A. COSTELLO, THE CONSTITUTION OF THE UNITED STATES OF AMERICA: ANALYSIS AND INTERPRETATION 123-24 (1992) (on "Rules of Proceedings").

[397] The joint statement of managers accompanying the conference report on the Trade Act of 2002 states with regard to Congress's exercise of the rulemaking power:

SEC. 2105 — IMPLEMENTATION OF TRADE AGREEMENTS

Present/expired law

. . . .

Finally, section 1103(d) of the 1988 Act specified that the fast track rules were enacted as an exercise of the rulemaking power of the House and the Senate, with the recognition of the right of either House to change the rules at any time.

House amendment

. . . .

Finally, as with the expired provision, section 2105(c) specifies that sections 2105(b) and 3(c) are enacted as an exercise of the rulemaking power of the House and the Senate, with the recognition of the right of either House to change the rules at any time.

Senate amendment

The Senate Amendment is substantially similar to the House Bill . . . .

. . . .

(continued...)

[397](...continued)
Conference agreement

The Senate recedes to the House amendment with several modifications.

H.R. REP. NO. 107-624, at 166-68 (2002).

The Senate Finance Committee report on the Trade Act of 2002 states with regard to Congress's exercise of the rulemaking power:

> Section 5(c) affirms that the foregoing procedures for adopting a disapproval resolution — as well as the procedures described in section 3(c) for adopting a resolution disapproving the extension of trade authorities procedures after June 30, 2005 — are enacted pursuant to the rule-making powers of the House of Representatives and the Senate. It further recognizes the constitutional right of either House to change its rules at any time.
>
> Section 5(c) simply confirms what is the case under Article I, section 5, clause 2 of the Constitution of the United States, which provides that "[e]ach House may determine the Rules of its Proceedings. . . ." Because the rules of proceedings in each House are determined by that House and do not require the consent of the other Chamber, each House may change its rules independently of the will of the other Chamber. Thus, if the Senate, by simple resolution, for example, chose to withdraw trade authorities procedures with respect to a particular agreement, it could do so, notwithstanding the failure of the House of Representatives to adopt an identical resolution within the 60-day period prescribed by section 5(b). The House's failure to act would not preclude the Senate from withdrawing trade authorities procedures by virtue of its simple resolution. Historically, when fast track legislation has been in place for trade agreements, neither House has ever acted unilaterally to withdraw application of fast track procedures.

S. REP. NO. 107-139, at 54 (2002).

The House Ways and Means Committee report on the Trade Act of 2002 states with regard to Congress's exercise of the rulemaking power:

> *Present/expired law*
>
> . . . .
>
> Finally, section 1103(d) of the 1988 Act specified that the fast track rules were enacted as an exercise of the rulemaking power of the House and the Senate, with the recognition of the right of either House to change the rules at any time.
>
> *Explanation of provision*
>
> . . . .
>
> Finally, as with the expired provision, section 5(c) specifies that sections 5(b) and

(continued...)

[397](...continued)
3(c) are enacted as an exercise of the rulemaking power of the House and the Senate, with the recognition of the right of either House to change the rules at any time.

H.R. REP. NO. 107-249, at 42-43 (2002).

Note that section 151(a) of the Trade Act of 1974 sets forth a similar provision. *See supra* p. 14 & footnotes there.

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