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Implementing Bills for Trade Agreements: Statutory Procedures under Trade Promotion Authority

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Summary

The Bipartisan Congressional Trade Priorities and Accountability Act of 2015 (BCTPAA, title II of P.L. 114-26) renewed the "trade promotion authority" (TPA) under which implementing bills for trade agreements that address non-tariff barriers to trade (and certain levels of tariff reduction) are eligible for expedited (or "fast track") consideration by Congress under the "trade authorities procedures" established by the Trade Act of 1974 (P.L. 93-618). These expedited procedures provide for automatic introduction of the implementing bill submitted by the President, attempt to ensure that both chambers will consider and vote on it, prohibit amendment, and eliminate any need to resolve bicameral differences before sending the measure to the President. (In practice, each chamber has usually agreed to consider each implementing bill under terms that modify or override the statutory requirements, but that usually retain the prohibition on amendment.)

These arrangements have been viewed as assuring negotiating partners that the United States will implement a trade agreement in the form negotiated; they also ensure that Congress will be able to conclude action within a delimited period of time. For these reasons, however, they also have often been seen as restricting Congress to approving or disapproving the terms of a trade agreement in the form negotiated by the President.

The BCTPAA, however, also mitigates these restrictions in several ways. First, it establishes numerous requirements that a trade agreement must meet in order for the implementing bill to be eligible for expedited consideration. Principally, it provides that (1) the trade agreement must promote a series of negotiating objectives, (2) the agreement and the implementing bill must meet several other requirements of content, (3) the President and the United States Trade Representative (USTR) must submit a range of required notifications, reports, and other materials to Congress in relation to any covered trade negotiations, and (4) the President and the USTR must engage in an extensive variety of ongoing consultations with Advisory Groups on Negotiations (established by the act), the House Committee on Ways and Means and the Senate Committee on Finance, and other organs of Congress.

Second, the BCTPAA provides several means by which Congress can deny expedited consideration for a specific trade agreement and either decline to consider it or consider it under terms that would permit amendment and eliminate debate limits. A "procedural disapproval resolution" (PDR) declares a trade agreement ineligible for expedited consideration because adequate consultations have not occurred or the agreement does not promote statutory objectives. Expedited consideration of the implementing bill is withdrawn if, within a 60-day period, each chamber adopts a PDR (subject to an applicable expedited procedure). Each chamber, as well, has available its own form of "consultation and compliance resolution" (CCR), by which it can deny expedited consideration in that chamber if it judges that adequate consultations have not occurred; the CCR, however, is not subject to expedited consideration. (By agreeing to a third form of resolution, either chamber may declare that a proposed agreement contravenes U.S. negotiating objectives regarding "trade remedies." This resolution may receive expedited consideration, but if adopted, does not deny expedited consideration to an implementing bill.) Also, either chamber might use its general rules to deny expedited consideration to an implementing bill, typically through a special rule in the House or by unanimous consent in the Senate.

Control over the use of all the mechanisms established by the BCTPAA lies principally with the revenue committees. They are the ones that receive most of the notifications and reports and that are most involved in the consultations, required by the act. The act also makes them responsible for negotiating the terms of the consultations with the executive. Significantly, the structure of the act allows them to use the act's informational requirements and consultations to develop, and

propose to the President, the text of the implementing bill he is to submit. They customarily do this through a proceeding known as a "mock markup."

Finally, the BCTPAA provides that any of the resolutions through which Congress can deny expedited consideration becomes available for floor consideration in either chamber only through action by the respective revenue committee. Accordingly, although the President need not submit his draft implementing bill in the form proposed through a mock markup, the revenue committee could still effectively determine whether that measure may receive expedited consideration. In all these ways, the structure of the BCTPAA establishes the revenue committees as the chief agents of Congress in preserving its constitutional prerogatives in relation to the trade agreements covered by the act.

This report is not designed to address events that may occur in congressional consideration of implementing legislation for the Trans-Pacific Partnership (TPP) or any other specific trade agreement under the BCTPAA. It will be updated only if changes occur in the statutory conditions for consideration of this class of trade agreements.

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The Bipartisan Congressional Trade Priorities and Accountability Act of 2015 (BCTPAA)[1] makes legislation that would implement certain kinds of international trade agreement negotiated by the President eligible for congressional consideration under a set of statutory expedited procedures.[2] The trade agreements in question, referred to in this report as "covered trade agreements," are those that address nontariff barriers to trade (such as import restrictions and unfair trade practices) as well as tariffs.[3] The BCTPAA designates the legislation required to implement such an agreement as an "implementing bill" and the expedited procedures for its consideration as the "trade authorities procedures,"[4] although they have also been known, more informally, as "fast track" procedures. In recent years, the President's opportunity to have an implementing bill for a covered trade agreement considered under the trade authorities procedures has been designated "trade promotion authority" (TPA).

The expedited procedures of the BCTPAA include the automatic introduction of the implementing bill when submitted by the President, the discharge of committees of referral if they do not report, time limits on floor debate, and a prohibition on amendment. Because these procedures are designed to ensure that Congress can take up the implementing bill and reach a final vote thereon without amendment, they have frequently been said to restrict Congress to choosing only whether or not to implement a covered trade agreement in the form negotiated by the President, and thereby as constraining Congress in the exercise of its constitutional legislative powers.

The BCTPAA provides, however, that an implementing bill may receive consideration under the trade authorities procedures only if the President negotiates the covered trade agreement in ways that meet an array of statutory requirements. These requirements include extensive specifications of the content that a covered trade agreement may have and of actions that must accompany the process of negotiating it. In this sense, "trade promotion authority" may be considered not as granting the President some authority to conclude trade agreements that he would not otherwise possess, but rather as affording the opportunity for covered trade agreements he negotiates to be implemented by Congress on an expedited basis—if they meet the requirements Congress has laid down.

These statutory requirements, moreover, operate in ways that may enable Congress to retain a degree of control over these agreements that is comparable in many respects to its control of legislation generally. Many of them operate in advance of the formal legislative process, and in that way compensate for the diminished congressional control for which the act provides when the formal process commences. Additionally, other provisions of the act establish procedural mechanisms that provide alternatives to congressional action on an implementing bill. These provisions afford Congress means of fostering compliance by the executive branch with the statutory provisions regulating the content of covered trade agreements and the processes accompanying their negotiation. The BCTPAA vests control over its procedural arrangements primarily in the House Committee on Ways and Means and the Senate Committee on Finance (collectively, the "revenue committees"), which are also the committees that exercise primary jurisdiction over implementing bills. Each chamber also retains the ability to maintain its control over legislation in this area through certain uses of its general procedural rules.

This report outlines how the BCTPAA regulates the eligibility of covered trade agreements for expedited consideration, describes the operation of the statutory expedited procedures for

[1] Title I of P.L. 114-26, 129 Stat. 319 at 320-361, 19 U.S.C. 4201-4210.

[2] These expedited procedures were originally established by Section 151 of the Trade Act of 1974 (19 U.S.C. 2191).

[3] BCTPAA, §103(b)(1); 19 U.S.C. 4202(b)(1).

[4] BCTPAA, §103(b)(3); 19 U.S.C. 4202(b)(3).

considering implementing bills, and discusses how Congress may use the procedural mechanisms established by the act, as well as other pertinent rules of each chamber, to retain a substantial measure of control over legislation to implement covered trade agreements.

Development and Significance of the "Fast Track" for Trade Agreements

Under the Constitution, Congress is authorized both to raise revenue and to regulate foreign commerce. In the early days of the Republic, Congress directly set tariff rates. Beginning in 1934,[5] however, Congress enacted a series of "reciprocal trade" acts, which each delegated authority to the President, for a specified period of years, to negotiate reciprocal reductions in tariffs with other countries and, for changes within specified limits, to implement such reductions by proclamation, rather than through further congressional legislation. By the 1970s, moreover, international trade negotiations came to focus increasingly on non-tariff barriers to trade, and Congress was unwilling to empower the President to implement agreements dealing with such issues on his own authority. Instead, Congress provided in the Trade Act of 1974 that if any such agreement negotiated by the President during a specified period of years met certain criteria, he could submit it to Congress for legislative implementation under an expedited procedure, prescribed by Section 151 of that act.[6]

Congress has since developed the statutory provisions governing the negotiation and implementation of covered trade agreements in successive acts, collectively referred to here as "trade acts," that renewed these arrangements for additional periods (that have not always been continuous). These acts have left the terms of the expedited procedure itself essentially unaltered, but have often modified the criteria for covered trade agreements and have progressively developed the available mechanisms for Congress to retain its ultimate control over legislation in this policy area. Initially, covered trade agreements included only comprehensive multilateral agreements on global terms of trade, but by 1988,[7] at the urging of the Office of the U.S. Trade Representative (USTR), Congress extended eligibility for expedited consideration also to "free trade" agreements with specific nations or groups of nations.[8]

The expedited procedures of the Trade Act of 1974 came to be referred to as "the fast track" for trade agreements, as if this set of expedited procedures was unique. Actually, however, both "expedited procedures" and the less formal expression "fast track" are general terms, applicable to an array of statutory provisions that establish conditions for congressional consideration of specified kinds of measure, intended to ensure Congress the opportunity to consider and vote on those measures.[9] Expedited procedures typically require action within a specified period of time

[5] 73rd Cong., Law, Public, No. 316, 48 Stat. 943.

[6] 19 U.S.C. 2191. The Trade Act of 1974 was enacted as P.L. 93-618, 88 Stat. 1978.

[7] Omnibus Trade and Competitiveness Act of 1988, P.L. 100-418, 102 Stat. 1107.

[8] Successive trade acts have retained the authority for the President to implement reciprocal reductions in tariffs within specified limits by proclamation. Such agreements are not "covered trade agreements" in the sense used here. In the BCTPAA, this reciprocal trade authority is contained in §103(a) (19 U.S.C. 4202(a). Additional detail on the overall history of trade acts appears in CRS Report RL33743, *Trade Promotion Authority (TPA) and the Role of Congress in Trade Policy*, by Ian F. Fergusson, and CRS Report R43491, *Trade Promotion Authority (TPA): Frequently Asked Questions*, by Ian F. Fergusson and Richard S. Beth.

[9] Several dozen such procedures applicable in the House of Representatives are listed in U.S. Congress, House, Constitution, Jefferson's Manual, and Rules of the House of Representatives of the United States, One Hundred Fourteenth Congress, [prepared by] Thomas J. Wickham, Parliamentarian, 113th Cong., 2nd sess., H.Doc. 113-181

and, in each chamber, provide means for bringing the measure to the floor even if the committee of jurisdiction does not report it. Such procedures also usually limit the time for consideration and preclude a variety of motions that could potentially be used with dilatory effect. To avoid potential delays in enactment, as well, expedited procedures often specify the wording of the measures they govern, prohibit amendment on the floor, and facilitate action by one chamber on a measure already passed by the other.

Most expedited procedures in areas other than trade, however, govern consideration of joint resolutions simply approving or disapproving an action proposed by the President. The procedures established by the Trade Act of 1974, by contrast, are among the few that apply to substantive legislation that may contain extensive specific policy provisions.[10] Perhaps partly for this reason, the term "fast track" has frequently been used, in relation to trade agreements, to highlight the restriction of congressional discretion that the expedited procedures of the Trade Act of 1974 establish. When Congress renewed the availability of these processes for developing and implementing covered trade agreements in the Bipartisan Trade Promotion Authority Act of 2002,[11] accordingly, that act re-designated the procedures as "trade promotion authority" (TPA). This designation too, however, seems often to have been understood, even by proponents of that act, as signifying that the legislation delegates to the President some authority to negotiate with other nations that he would not otherwise possess, and in that way constrains the legislative authority of Congress. In fact, as elaborated in the next section, it seems clear that the President's constitutional authority in the area of foreign affairs would afford him sufficient authority to negotiate trade agreements even in the absence of any specific statutory authorization. In this context, the "trade authorities procedures" made available by the Trade Act of 1974 and subsequent trade acts operate, first of all, to limit eligibility for expedited consideration only to those covered trade agreements that meet the requirements specified in the act. Except in references to the 2002 act, the BCTPAA seldom uses the designation "trade promotion authority."

Statutory Means of Congressional Control

The expedited "trade authorities procedures" of Section 151 of the Trade Act of 1974, particularly the prohibition against amending an implementing bill, are frequently justified as necessary to provide assurance to U.S. negotiating partners that Congress will act on a covered trade agreement in the form negotiated. If a bill to implement a trade agreement were to be amended, it would likely come to include provisions at variance with the terms of the trade agreement. If the amended implementing bill then became law in that form, the provisions enacted would differ from those on which the negotiating parties had agreed, and to that extent, what the law would implement would be something other than the trade agreement.[12]

The need for these restrictions, however, also rests on grounds fundamentally rooted in internal congressional procedure. As detailed in the section on "Substance of Agreement and of Implementing Bill," the BCTPAA narrowly specifies the provisions that an implementing bill

(Washington: GPO, 2015), §1130(1)-1130(33). Such procedures are discussed in archived CRS Report RL30599, *Expedited Procedures in the House: Variations Enacted into Law*, by Christopher M. Davis.

[10] Other examples of substantive legislation whose consideration is governed by expedited procedures are congressional budget resolutions and reconciliation bills, expedited procedures for which are established by the Congressional Budget and Impoundment Control Act of 1974, as amended (P.L. 93-344, 2 U.S.C. 601-688).

[11] Title XXI of the Trade Act of 2002, P.L. 107-210, 116 Stat. 933 at 993-1022.

[12] See, for example, "Is TPA Necessary?" in CRS Report R43491, *Trade Promotion Authority (TPA): Frequently Asked Questions*, by Ian F. Fergusson and Richard S. Beth.

must contain to be eligible for consideration under the trade authorities procedures of Section 151.[13] If an implementing bill, in the form introduced, met those conditions, the subsequent adoption of any amendment might afford grounds for a point of order that the bill had thereby lost its required character and was no longer eligible for consideration under the expedited procedure.[14]

If either chamber were to amend an implementing bill, moreover, a process of resolving the differences between the versions passed by the two houses would presumably become necessary before the measure could be sent to the President for signature.[15] Congress, however, has never established any effective way of compelling the two chambers to agree on a single version of a measure within any fixed time limit (or, indeed, at all).[16] If House and Senate versions of an implementing bill could differ, accordingly, it could become impossible to realize the intention of the expedited procedure to require Congress to act within a determinate time frame.

The BCTPAA addresses the constraints it places on the ability of Congress to amend an implementing bill by establishing an array of mechanisms to enable Congress, instead, to influence the legislation before it is formally introduced. First, the act specifies conditions that the content of a covered trade agreement and its implementing bill must meet to come within the scope of the act. Second, it requires the executive to notify Congress of key stages and elements in the processes of negotiating a covered trade agreement and those leading up to the formal introduction of the implementing bill, and to report to Congress throughout the process on various aspects of the negotiations and the resulting agreement. These requirements enable Congress to monitor whether the prospective content of the trade agreement and the process of its negotiation are consistent with the conditions the act lays down. Third, the act requires the executive to consult in specified ways with various organs of Congress throughout these processes, thereby affording Congress potential opportunities to influence the content of the agreement and the implementing bill in advance of its introduction. (The next part of this report, on "Eligibility for Expedited Consideration," details all these stipulations of the act.)

Statutory requirements of these kinds alone might not constrain executive branch actions in the absence of a means for Congress to induce compliance. The BCTPAA, however, addresses this consideration through several provisions that effectively prevent covered trade agreements from being implemented pursuant to the act unless the act's requirements are met. First, the BCTPAA provides that unless certain of its notification and submission requirements are met, a covered trade agreement cannot "enter into force" for the United States pursuant to the trade promotion authority.[17] Next, the act provides that unless a broad range of its requirements for content,

[13] BCTPAA, §103(c)(3); 19 U.S.C. 4202(c)(3).

[14] As will be discussed in the section on "Statutory Procedures for Expedited Consideration," however, consideration of the measure under the general rules of each chamber would presumably remain in order.

[15] Congress resolves such differences either by means of a conference committee or through an exchange of amendments between the houses. See CRS Report 98-696, *Resolving Legislative Differences in Congress: Conference Committees and Amendments Between the Houses*, by Elizabeth Rybicki, and CRS Report 96-708, *Conference Committee and Related Procedures: An Introduction*, by Elizabeth Rybicki.

[16] A mechanism to address this difficulty was proposed in S. 253 of the 105th Congress (1997-1998) but received no floor consideration. This measure provided that if the two chambers passed different versions of an implementing bill, and conferees could reach no agreement on a final version within a specified time limit, any Member could introduce a bill reflecting the text initially submitted by the President, and this bill could receive immediate consideration under the time limits provided for a conference report, with no amendment in order. This mechanism might either ensure Congress an opportunity to vote on the original text or serve as an incentive for conferees to reach agreement on a preferred version.

[17] BCTPAA, §106(a)(1); 19 U.S.C. 4205(a)(1).

information, and consultations are met, the President may not enter into (sign) the agreement pursuant to the trade promotion authority in the first place.[18] Finally, the act establishes procedural mechanisms through which, if the trade agreement and the process of its negotiation do not meet the chief content and consultation requirements of the act, Congress may withdraw the eligibility of the implementing bill for expedited consideration under the trade authorities procedures.[19] (The later section of this report on "Means of Withdrawing Expedited Consideration" elaborates on the operation of these provisions.)

Congress may use all these procedural provisions of the BCTPAA not only as means to forestall expedited implementation of covered trade agreements that do not meet the requirements of the act, but also prospectively, as means of bringing about compliance with those requirements. In general, the structure of the BCTPAA makes the revenue committees of the two chambers central to such action. First, these committees will typically be most familiar with the requirements the act places on implementing bills and most concerned that they be met. Second, under the act, these panels are the congressional agents most centrally engaged in receiving the required reports and notifications and in conducting the stipulated consultations. As a result, these committees are also normally best situated to perform the functions of monitoring negotiations and shaping their outcomes. Finally, the act places control over the use of the procedural mechanisms for regulating or denying expedited consideration chiefly in the hands of these same committees. In all these ways, the act establishes the revenue committees as the chief agents of Congress in asserting and maintaining the prerogatives of the legislative branch in relation to covered trade agreements.

Congress also may use procedures available under its general rules to determine whether an implementing bill should receive consideration, and under what terms. (Ways in which either chamber might make and carry out such determinations are discussed below under "Means of Withdrawing Expedited Consideration.") In such cases, in general, the revenue committees do not formally possess any such degree of control as provided by the special mechanisms of the BCTPAA. Given the jurisdiction these panels exercise over the substantive questions involved, nevertheless, these panels are likely, in practice, to also exercise significant influence over whether to pursue action under the general rules.

Finally, however, the requirements of the BCTPAA, both substantive and procedural, are to be understood as operative only within the context of the act itself. Outside that context, the President no doubt still possesses broad constitutional authority to enter into trade agreements with other nations through processes he may find expedient and containing provisions he may consider appropriate. The implementation of such an agreement would no doubt still require legislation by Congress, but even when no statutory expedited procedures might be available for that purpose, Congress could still act through its regular legislative processes.

Eligibility for Expedited Consideration

Among the requirements the BCTPAA establishes for covered trade agreements to be eligible for expedited consideration under the trade authorities procedures of Section 151, three general classes may be distinguished, related respectively to (1) the substance of the agreement and of its implementing bill; (2) notifications, reports, and other submissions to Congress by the President, the USTR, and other entities; and (3) consultations with organs of Congress by the President, the USTR, and others. The following sections discuss each of these classes in turn; a separate section

[18] BCTPAA, §103(b)(2); 19 U.S.C. 4202(b)(2).

[19] BCTPAA, §106(b); 19 U.S.C. 4205(b).

describes the process of the "mock markup," which may be understood as a special form of consultative process under the act.

Substance of Agreement and of Implementing Bill

The provisions of the BCTPAA that address covered trade agreements begin with a broad authorization for the President to enter into (sign) a trade agreement that reduces, eliminates, prohibits, or limits existing duties or other foreign barriers to trade if he determines (1) that such duties or barriers "unduly burden[ ] or restrict[ ]" United States trade, "adversely affect[ ]" the United States economy, or are likely to do so; and (2) that the "purposes, policies, priorities, and objectives" of the act "will be promoted" by such action.[20] Further, the act directs the President to commence negotiations "affecting any industry, product, or service sector ... in cases where such negotiations are feasible and timely and would benefit the United States."

The BCTPAA, however, also provides that in carrying out this directive, the President is to take into account "all of the negotiating objectives" established by the act.[21] Moreover, a covered trade agreement is eligible for implementation pursuant to the trade authorities procedures of Section 151 only if it "makes progress in meeting the applicable objectives" the BCTPAA lays out.[22] The act sets forth these objectives as 13 "overall" and 21 "principal" objectives.[23] "Overall" objectives include such matters as "the reduction of ... barriers and distortions ... to trade and investment."[24] "Principal" objectives address, in some detail, specific policy areas, such as agriculture, textiles and apparel, intellectual property rights, labor and the environment, regulatory practices, digital trade, and trade remedy laws.[25]

The BCTPAA also restricts the applicability of the trade authorities procedures in several further ways.[26] In the first place, it limits eligibility for consideration under these procedures to covered trade agreements entered into before July 1, 2018. "Substantial modifications to, or substantial additional provisions of," a covered trade agreement that are entered into after this date are ineligible for expedited consideration under the act.[27]

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[20] BCTPAA, §103(b)(1)(A) and 103(b)(1)(B); 19 U.S.C. 4202(b)(1)(A) and 4202(b)(1)(B).

[21] BCTPAA, §103(d); 19 U.S.C. 4202(d).

[22] BCTPAA, §103(b)(2); 19 U.S.C. 4202(b)(2).

[23] BCTPAA, §102(a), 102(b) and 103(b)(2); 19 U.S.C. 4201(a), 4201(b), and 4202(b)(2). The Trade Act of 1974 and its successors have all contained similar statements of objectives, but Congress has revised and expanded their contents in successive trade acts in order to address developing circumstances and priorities.

[24] BCTPAA, §102(a)(2); 19 U.S.C. 4201(a)(2).

[25] BCTPAA, §102(b); 19 U.S.C. 4201(b). "Trade remedy laws" are those through which the United States counters "unfair trade" practices such as dumping and subsidies. BCTPAA, §102(b)(17); 19 U.S.C. 4201(b)(17). (See also the section below on the "Trade Remedies Resolution.") For more specific discussion of the objectives established by the BCTPAA, see "Trade Negotiating Objectives" in CRS Report R43491, *Trade Promotion Authority (TPA): Frequently Asked Questions*, by Ian F. Fergusson and Richard S. Beth.

[26] The BCTPAA also would have prohibited altogether the use of expedited procedures on implementing bills for trade agreements "negotiated under the auspices of the World Trade Organization" unless the Secretary of Commerce transmitted to Congress by December 15, 2015, a report prepared in consultation with certain other executive branch officials on "whether dispute settlement panels and the Appellate Body of the World Trade Organization have added to obligations, or diminished rights, of the United States." BCTPAA, §106(b)(5); 19 U.S.C. 4205(b)(5).

[27] BCTPAA, §103(b)(1)(C); 19 U.S.C. 4202(b)(1)(C). The President may receive an extension of this period to July 1, 2021, if he so requests, unless the revenue committee of either house reports, and that house adopts, a resolution disapproving the extension. Consideration of this resolution is subject to an expedited procedure of its own. The procedures of this mechanism, the specifics of which are beyond the scope of this report, are established by §103(c) of the BCTPAA (19 U.S.C. 4202(c)) and §152 of the Trade Act of 1974 (19 U.S.C. 2192).

Second, the act introduces a new stipulation that a covered trade agreement is not eligible for expedited consideration if it includes any "country to which the minimum standards for the elimination of [human] trafficking are applicable and the government of which does not fully comply with such standards and is not making significant efforts to bring the country into compliance."[28]

Finally, the BCTPAA provides that a covered trade agreement can enter into force with respect to the United States only if the implementing bill is enacted into law,[29] and sets forth with specificity the form the implementing bill must take in order to be eligible for expedited consideration. Such a measure must consist only of provisions approving the trade agreement and the statement of administrative action (SAA) proposed by the President to implement it, and, "if changes in existing laws or new statutory authority are required to implement" the agreement, "only such provisions as are strictly necessary or appropriate" for that purpose.[30] A separate provision, new to the BCTPAA, specifies that the implementing bill must also "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."[31]

Informational Requirements

The BCTPAA establishes a range of requirements for the executive branch to provide to Congress, or to publish, information about a covered trade agreement and the process of negotiating it. Most of the required actions are to occur during the process of negotiation and up to the submission of an implementing bill, and appear designed chiefly to help Congress determine whether a given trade agreement comports with its own intentions in establishing TPA.[32]

The majority of the actions required take the form of notifications, reports, or submissions by the President to either Congress as a whole or specifically its revenue committees. Reports submitted to Congress as a whole are normally referred to the committees with jurisdiction over the subject matter, which in these cases presumably includes the revenue committees. The statute requires that the President:

- Notify Congress, at least 90 days before initiating any negotiations for a covered trade agreement, of his intent to do so, the objectives of the negotiations, and whether a new agreement or changes in an existing one are sought.[33]

[28] BCTPAA, §106(b)(6); 19 U.S.C. 4205(b)(6). Compliance with this requirement is to be determined with reference to an annual report of the Secretary of State on the subject under §110(b)(1) of the Trafficking Victims Protection Act of 2000 (P.L. 106-386, 114 Stat. 1464; 22 U.S.C. 7107(b)(1)).

[29] BCTPAA, §106(a)(1)(F); 19 U.S.C. 4205(a)(1)(F).

[30] BCTPAA, §103(b)(3); 19 U.S.C. 4202(b)(3). Earlier trade acts have contained similar provisions, although the language with respect to changes in existing law has become increasingly strict over time.

[31] BCTPAA, §106(a)(3); 19 U.S.C. 4205(a)(3).

[32] These requirements are set forth chiefly in BCTPAA §105 (19 U.S.C. 4204; "Notices, Consultations, and Reports") and §106 (19 U.S.C. 4205; "Implementation of Trade Agreements"). Provisions of the BCTPAA also establish a number of requirements for reports to be made after a covered trade agreement is in force, or independent of any specific trade agreement. Inasmuch as these requirements do not affect the process through which Congress acts on trade agreements, this report does not address them. They nevertheless illustrate the extent to which Congress—and specifically the revenue committees—desire to maintain oversight in this area.

[33] BCPTAA, §105(a)(1)(A); 19 U.S.C. 4204(a)(1)(A).

- Report to the revenue committees, by 180 days before entering into (signing) a covered trade agreement, on proposals being considered in the negotiations that might require changes in U.S. trade remedy laws.[34] (On the basis of this report, Congress may respond with a """Trade Remedies Resolution",'" as discussed below under that heading.)
- Notify Congress, by 90 days before entering into a covered trade agreement, of his intention to do so.[35]
- Submit to Congress, by 60 days after entering into a covered trade agreement, a description of changes in existing U.S. law that he considers the agreement would require.[36]
- Provide to Congress, by 30 days before submitting his draft implementing bill, "a copy of the final legal text of the agreement" and "a draft statement of any administrative action proposed to implement" it.[37]
- Submit to Congress, "on a day on which both Houses of Congress are in session," the draft implementing bill (which must meet the requirements of content discussed in the previous section of this report), along with:

1. another "copy of the final legal text of the agreement";
2. the statement of administrative action (SAA);
3. an explanation of how the bill and SAA will affect existing law; and
4. a statement explaining how the implementing bill meets the content requirements described earlier, "asserting that the agreement makes progress in achieving the applicable purposes, policies, priorities, and objectives of the Act," explaining how it does so, stating whether the agreement changes provisions of "an agreement previously negotiated," and explaining how the agreement "serves the interests of United States Commerce."[38]

- Report to Congress, at the same time as he submits the draft implementing bill, a plan for implementing and enforcing the agreement (including requirements for personnel in agencies responsible for monitoring and implementing it and at border entry points, as well as for facilities for U.S. Customs and Border Protection) and describing the impact of increases in trade on State and local governments, together with the costs of all these.[39]
- Report to the revenue committees, at the same time he submits the draft implementing bill, on:

  1. his "environmental reviews of future trade and investment agreements";

[34] BCTPAA, §105(b)(3); 19 U.S.C. 4204(b)(3).

[35] BCTPAA, §106(a)(1)(A); 19 U.S.C. 4205(a)(1)(A).

[36] BCTPAA, §106(a)(1)(C); 19 U.S.C. 4205(a)(1)(C).

[37] BCTPAA, §106(a)(1)(D); 19 U.S.C. 4205(a)(1)(D).

[38] BCTPAA, §106(a)(1)(E) and 106(a)(2); 19 U.S.C. 4205(a)(1)(E) and 4205(a)(2).

[39] BCTPAA, §105(e); 19 U.S.C. 4204(e). The President was also mandated to include in his next budget a request for the resources to support this plan.

2. his "reviews of the impact of future trade agreements on United States employment, including labor markets,"40 and

3. the "content and operation" of consultative mechanisms established among parties to trade agreements to promote the building of capacities to address environmental and health issues.[41]

- Report to the revenue committees, at the same time he submits the draft implementing bill, on labor rights in the countries participating in the trade agreement and on changes in U.S. labor laws required by the agreement.[42]
- Notify Congress, at least 30 days before the trade agreement "enters into force with respect to a party" thereto, of his determination "that the party has taken measures necessary to comply" with the provisions "that are to take effect on the date" it enters into force.[43]

A number of other informational requirements of the BCTPAA take the form of reports either to Congress from entities other than the President or from the President to recipients other than Congress. These requirements include the following:

- At least 30 days before the start of negotiations for a covered trade agreement, following consultations on the subject (as described in the next section) with the revenue committees and other organs of Congress, the President is to post on the Internet a statement of the objectives of the negotiations.[44]
- At least 90 days before entering into the agreement, the President is to submit to the International Trade Commission (ITC) "the details of the agreement as it exists at that time," after which he is to "keep the Commission current" on the matter.[45]
- On the basis of this information, not later than 105 days after the agreement is entered into, the ITC is to report to Congress and the President on the likely impact of the agreement on the U.S. economy "and on specific industry sectors," including a review of "empirical literature ... regarding the agreement."[46]
- Meanwhile, no later than 30 days after the President notifies Congress of his intention to enter into the agreement (see above), the Federal Advisory Committee for Trade Policy and Negotiations is to report to the President, Congress, and the USTR on the agreement, including "to what extent it promotes

[40] BCTPAA, §105(d)(1) and 105(d)(2); 19 U.S.C. 4204(d)(1) and 4204(d)(2).

[41] BCTPAA, §105(d)(1)(B); 19 U.S.C. 4204(d)(1)(B). BCTPAA, §102(c) (19 U.S.C. 4201(c)) mandates the development of consultative mechanisms to "strengthen the capacity of United States trading partners to develop and implement standards for the protection of the environment and human health," as well as consultation with partners to multilateral environmental agreements that include trade measures "regarding [their] consistency with existing environmental exceptions under" the General Agreement on Tariffs and Trade (GATT).

[42] Pursuant to §105(d)(3) and 104(c)(3) of the BCTPAA (19 U.S.C. 4204(d)(3) and 4203(c)(3)), the timing of this report was apparently determined under guidelines developed by the United States Trade Representative and leaders of the revenue committees, discussed in the following section on "Consultations" (see footnote 53).

[43] BCTPAA, §106(a)(1)(G).

[44] BCTPAA, §105(a)(1)(D); 19 U.S.C. 4204(a)(1)(D).

[45] BCTPAA, §105(c)(1); 19 U.S.C. 4204(c)(1). This submission is to be concurrent with the President's notification to Congress of intent to enter into the agreement, discussed in the next section of this report.

[46] BCTPAA, §105(c)(2)-105(c)(4); 19 U.S.C. 4204(c)(2)-4204(c)(4).

the economic interests of the United States and achieves the applicable ... objectives."[47]

- Finally, at least 60 days before entering into the agreement, the President is to post the text of the agreement on the Internet.[48]

Consultations

The BCTPAA also provides for an extensive system of consultations between the President or the USTR, on one hand, and various organs of Congress, on the other, before, during, and after negotiations on a covered trade agreement.[49] Congressional participants in these consultations include not only (1) each chamber's respective revenue committee, but also (2) the respective Committees on Agriculture, (3) other committees with jurisdiction in areas to be affected by a covered trade agreement, (4) Advisory Groups on Negotiations, established pursuant to the act in each chamber, (5) designated "congressional advisers" in each chamber, and (6) other Members. The detailed structure of the statutory provisions relating to these consultations suggests a congressional intent to ensure that the executive branch does not carry them out in a nominal or perfunctory fashion. Rather, provisions of the act are designed to secure the ongoing, close engagement of congressional representatives in the negotiation of covered trade agreements, and also to ensure that the executive branch will be aware of Congress's concerns and preferences with respect to the prospective agreement.

As with other elements of the statutory scheme, these provisions maintain a central role for the revenue committees of the two houses. First, as noted, these committees are themselves chief participants in these consultations. Second, they play key roles in the House and Senate Advisory Groups on Negotiations established by the act. Within 60 days after enactment of the BCTPAA, and within 30 days after each new Congress convenes, the chair of each chamber's revenue committee is to convene that chamber's Advisory Group, of which he or she is also the chair. Each Advisory Group also includes (1) the respective revenue committee's ranking minority Member; (2) three other members of the committee, at least one of whom must come from the minority party; and (3) the chair and ranking minority Member of other committees of the respective chamber with jurisdiction in areas affected by trade agreements being negotiated during that Congress.[50]

The USTR is to accredit each member of these Advisory Groups as "an official adviser to the United States delegation in negotiations" for any covered trade agreement (or, for members from committees other than the revenue committees, for negotiations addressing issues within that committee's jurisdiction).[51] The act also mandates that the USTR, in consultation with the chairs and ranking minority Members of both revenue committees, develop guidelines for the consultations with the Advisory Groups and "designated advisers" in each house.[52] These

[47] BCTPAA, §105(b)(4); 19 U.S.C. 4204(b)(4). This advisory commission and its report are provided for by 19 U.S.C. 2155.

[48] BCTPAA, §106(a)(1)(B); 19 U.S.C. 4205(a)(1)(B).

[49] These requirements appear chiefly in BCTPAA §104 (19 U.S.C. 4203; "Congressional Oversight, Consultations, and Access to Information") and §105 (19 U.S.C. 4204; "Notices, Consultations, and Reports").

[50] BCTPAA, §104(c)(1), 104(c)(2)(A), 104(c)(2)(B), and 104(c)(2)(E); 19 U.S.C. 4205(c)(1), 4205(c)(2)(A), 4205(c)(2)(B), and 4205(c)(2)(E).

[51] BCTPAA, §104(c)(2)(C); 19 U.S.C. 4203(c)(2)(C).

[52] BCTPAA, §104(c)(3) and 104(a)(3), respectively; 19 U.S.C. 4203(c)(3) and 4203(a)(3). The same group is also to develop guidelines for consultations with the public (BCTPAA, §104(d); 19 U.S.C. 4203(d)) and with a Federal

guidelines are to provide for access to classified materials and other pertinent documents, as well as for:

> detailed briefings on a fixed timetable ... regarding negotiating objectives and positions and the status of the applicable negotiations, beginning as soon as practicable after the congressional advisory groups are convened, with more frequent briefings as trade negotiations enter the final stage; ... the closest practicable coordination between the Trade Representative and the congressional advisory groups at all critical periods during the negotiations, including at negotiation sites; [and] after the ... agreement is concluded, consultations regarding ongoing compliance and enforcement. [53]

Third, the revenue committees also play a role in structuring consultations with the "designated congressional advisers" and other Members of Congress. The BCTPAA provides that the Speaker of the House and the President pro tempore of the Senate may designate "congressional advisers on trade policy and negotiations" in their respective chambers. They are to do so, however, after consultation, not only with the chair and ranking minority Member of the "committee from which the Member will be selected," but also with those of the respective chamber's revenue committee.[54] The USTR is to accredit each of these designated advisers as "an official adviser to the United States delegation to ... meetings and negotiating sessions related to trade agreements."[55]

Finally, the consultations prescribed by the BCTPAA further establish the central role of the revenue committees and of the House and Senate Advisory Groups in which members of those committees play central roles. In particular, in relation to negotiations for a covered trade agreement, the act:

- gives the two Advisory Groups a broad mandate to "consult with and provide advice to" the USTR on "the formulation of specific objectives, negotiating strategies and positions, the development of the ... agreement, and compliance and enforcement of the negotiated commitments" thereunder;[56]
- requires the President, before and after giving his 90 days' notice of intent to begin negotiations (noted in the previous section), to consult with the revenue committees, other committees as he deems appropriate, and the two Advisory Groups;[57]
- also requires the President, before initiating or continuing negotiations related to agriculture, to consult with the revenue committees and the Committees on Agriculture on whether further reductions in tariffs on agricultural products are

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Advisory Committee for Trade Policy and Negotiations, established under 19 U.S.C. 2155 (BCTPAA, §104(e); 19 U.S.C. 4203(e)). In each case, the specified group was to develop these guidelines by 120 days after enactment of the BCTPAA, and is authorized to revise them as necessary. The guidelines were issued on October 27, 2015, the 120th day after enactment. [U.S., Executive Office of the President,] Office of the United States Trade Representative, "Guidelines for Consultation and Engagement," issued October 27, 2015, accessed at https://ustr.gov/sites/default/files/USTR%20Guidelines%20for%20Consultation%20and%20Engagement.pdf on July 29, 2016.

[53] BCTPAA, §104(c)(3); 19 U.S.C. 4203(c)(3). As issued, these guidelines also appear to determine the timing of the President's report to the revenue committees on labor rights mandated by §105(d)(3) of the BCTPAA, listed above in the section on "Notifications, Reports, and Submissions" (see footnote 42). Office of the United States Trade Representative, "Guidelines for Consultation and Engagement," issued October 27, 2015.

[54] BCTPAA, §104(b)(1); 19 U.S.C. 4203(b)(1).

[55] BCTPAA, §104(b)(3); 19 U.S.C. 4203(b)(3).

[56] BCTPAA, §104(c)(2)(D); 19 U.S.C. 4203(c)(2)(D).

[57] BCTPAA, §105(a)(1)(B); 19 U.S.C. 4204 (a)(1)(B).

appropriate, and on how applicable negotiating objectives will be met (based on an assessment which he is mandated to make of the relations among existing agricultural tariffs of the United States, its negotiating partners, and other countries);[58]

- requires the USTR, before initiating or continuing negotiations on agriculture, to consult with the revenue committees and the Committees on Agriculture on the extent to which further tariff reductions on "import-sensitive" agricultural products subject to trade barriers would be appropriate;[59]
- directs the USTR, after these consultations, to notify the same committees of any "import-sensitive" agricultural products on which tariff reductions will be sought and the reasons for doing so, and of any later additions to the list once negotiations have commenced;[60]
- requires the President, before initiating or continuing negotiations regarding the fishing industry, to consult with the revenue committees, the House Committee on Natural Resources, and the Senate Committee on Commerce, Science, and Transportation and "keep them apprised of the negotiations on an ongoing and timely basis";[61]
- requires the President, before initiating or continuing negotiations regarding textiles and apparel, to consult with the revenue committees on whether further tariff reductions in this area are appropriate, based on an assessment he is mandated to make of the relation between existing tariffs of the U.S. and its negotiating partners in this area;[62]
- requires the President, at any time before or during negotiations, to meet with each Advisory Group upon request of a majority thereof;[63]
- mandates that during the course of negotiations, the USTR "consult closely and on a timely basis with, and keep fully apprised of the negotiations," not only the two Advisory Groups, but also the revenue committees themselves, and all committees in each chamber "with jurisdiction over laws that could be affected by" the agreement;[64]
- establishes a similar mandate for consultations by the USTR during the course of negotiations with the Committees on Agriculture and with the designated advisers in each chamber, but in these cases the act specifies that the consultations also occur "immediately before initialing an agreement";[65]
- requires the President, before entering into (signing) a covered trade agreement, to consult with the revenue committees, other committees with jurisdiction over

[58] BCTPAA, §105(a)(2)(A); 19 U.S.C. 4204(a)(2)(A).

[59] BCTPAA, §105(a)(2)(B)(i)(I) and 105(a)(2)(B)(i)(II); 19 U.S.C. 4204(a)(2)(B)(i)(I) and 4204(a)(2)(B)(i)(II). The USTR is also to request the International Trade Commission to assess the effects of such reductions on U.S. producers and the U.S. economy. BCTPAA, §105(a)(2)(B)(i)(III); 19 U.S.C. 4204(a)(2)(B)(i)(III).

[60] BCTPAA, §105(a)(2)(B)(i)(IV) and 105(a)(2)(B)(ii); 19 U.S.C. 4204(a)(2)(B)(i)(IV) and 4204(a)(2)(B)(ii).

[61] BCTPAA, §105(a)(3); 19 U.S.C. 4204(a)(3).

[62] BCTPAA, §105(a)(4); 19 U.S.C. 4204(a)(4).

[63] BCTPAA, §104(c)(4) and 105(a)(1)(C); 19 U.S.C. 4203(c)(4) and 4204(a)(1)(C).

[64] BCTPAA, §104(a)(1)(C) and 104(a)(1)(D); 19 U.S.C. 4203(a)(1)(C) and 4203(a)(1)(D).

[65] BCTPAA, §104(a)(1)(E) and 104(b)(2); 19 U.S.C. 4203(a) (1)(E) and 104(b)(2).

matters affected by the agreement, and the two Advisory Groups, on the "nature of the agreement," how it advances "applicable purposes, policies, priorities, and objectives" of the BCTPAA, and its implementation, including its effect on existing laws;[66]

- requires the USTR, "prior to exchanging notes providing for the entry into force of a trade agreement," to consult "closely and on a timely basis" with several of the groups previously specified (including the revenue committees, the two Advisory Groups, the agriculture committees, other committees whose jurisdictions the agreement might touch on, and other Members of Congress) to "keep them fully apprised of the measures a trading partner has taken to comply with those provisions of the agreement that are to take effect on the date that the agreement enters into force."[67]

In addition, although the BCTPAA does not direct that Members of Congress other than those of the two Advisory Groups and the "designated advisers" be accredited as advisers to trade negotiations, it nevertheless directs the USTR to provide any Members of either house with "timely briefings upon request regarding negotiating objectives, the status of negotiations in progress," and changes in law that "may be recommended to carry out any trade agreement," as well as with "access to pertinent documents ... including classified materials."[68] Moreover, the act authorizes members of committees that are represented on an Advisory Group, but who are not themselves members of that Advisory Group, to submit comments on "any matter related to a negotiation for" any covered trade agreement to that committee's member of the Advisory Group.[69] It also authorizes all Members to submit their "views on any matter relevant to a proposed trade agreement" to the revenue panel of their own chamber for consideration.[70]

The "Mock Markup"

The earlier section on "Informational Requirements" noted that the President's submission to Congress of a draft implementing bill (and requisite supporting materials) is subject to no specific requirements of timing in relation to the negotiation of the trade agreement itself (although, of course, the submission must necessarily occur after the agreement is signed). By 60 days after entering into a covered trade agreement, however, the President is to submit to Congress a description of changes in existing U.S. law that he considers the agreement would require; and at least 30 days before he submits a draft implementing bill, he is to submit to Congress the final text of the agreement and a draft statement of administrative action (SAA) proposed to implement it. The period between these submissions and that of the draft implementing bill itself allows for the occurrence of a pivotal phase of the process: the so-called "mock markup" of the draft implementing bill by the revenue committees.

In the mock markup process, the revenue committees meet to develop text they consider appropriate for the implementing bill. The President's preceding submissions of required changes in law, the text of the trade agreement, and the draft SAA, as well as the information obtained through the committees' engagement throughout the process of negotiating the trade agreement (by means of the required reports, notifications, and consultations required), afford these panels a

[66] BCTPAA, §105(b); 19 U.S.C. 4204(b).

[67] BCTPAA, §104(a)(2); 19 U.S.C. 4203(a)(2).

[68] BCTPAA, §104(a)(1), 104(a)(3)(B); 19 U.S.C. 4203(a)(1), 4203(a)(3)(B).

[69] BCTPAA, §104(c)(2)(F); 19 U.S.C. 4203(c)(2)(F).

[70] BCTPAA, §105(g); 19 U.S.C. 4204(g).

basis on which they can develop this text. The process is normally expected to conclude with the committees' transmission of their product to the President as their proposal for the text of the draft implementing bill he will later submit.

Neither the BCTPAA nor its predecessor statutes explicitly mention the mock markup process, nor does any extended discussion of the matter appear to be contained in any committee report on the legislation that became the Trade Act of 1974 or the Omnibus Trade and Competitiveness Act of 1988.[71] Past House and Senate committee reports on implementing bills for covered trade agreements, however, make clear that the mock markup has been the universal practice of the revenue committees in dealing with these agreements.[72] The report of the Senate Committee on Finance on the BCTPAA describes the initial emergence of the practice during congressional consideration of the legislation to implement the Tokyo Round of multilateral trade agreements.[73] Finally, the reports on the BCTPAA submitted by both revenue committees include extensive explanations of legislative intent in reference to the mock markup process.[74] The report of the Senate Committee on Finance says:

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[71] U.S. Congress, House Committee on Ways and Means, *Trade Reform Act of 1973*, Report, together with dissenting views, to accompany H.R. 10710, 93rd Cong., 1st sess., October 10, 1973, H.Rept. 93-571 (Washington: GPO, 1973); U.S. Congress, Senate Committee on Finance, *Trade Reform Act of 1974*, Report, together with additional views, on H.R. 10710, 93rd Cong., 2nd sess., November 26, 1974, S.Rept. 93-1298 (Washington: GPO, 1974); U.S. Congress, Committee of Conference on H.R. 10710, *Trade Act of 1974*, Conference report to accompany H.R. 10710, 93rd Cong., 2nd sess., December 19, 1974, H.Rept. 93-1644; U.S. Congress, House Committee on Ways and Means, *Trade and International Economic Policy Reform Act of 1987*, Report to accompany H.R. 3, 100th Cong., 1st sess., April 6, 1987, H.Rept. 100-40, Part 1 (Washington: GPO, 1987); U.S. Congress, Senate Committee on Finance, *Omnibus Trade Act of 1987*, 100th Cong., 1st sess., June 12, 1987, S.Rept. 100-71 (Washington: GPO, 1987); and U.S. Congress, Committee of Conference on H.R. 3, *Omnibus Trade and Competitiveness Act of 1988*, Conference report to accompany H.R. 3, 100th Cong., 2nd sess., April 20, 1987, H.Rept. 100-576 (Washington: GPO, 1987).

[72] See, for example: U.S. Congress, House Committee on Ways and Means, *North American Free Trade Agreement Implementation Act*, Report to accompany H.R. 3450, 103rd Cong., 1st sess., November 15, 1993, H.Rept. 103-361, Part 1 (Washington: GPO, 1993); U.S. Congress, Senate Committee on Finance, *North American Free Trade Agreement Implementation Act*, Joint report to accompany S. 1627, 103rd Cong., 1st sess., November 18, 1993, S.Rept. 103-189 (Washington: GPO, 1993); U.S. Congress, House Committee on Ways and Means, *United States-Australia Free Trade Agreement Implementation Act*, Report, together with dissenting and additional views, to accompany H.R. 4759, 108th Cong., 2nd sess., July 12, 2004, H.Rept. 108-597 (Washington: GPO, 2006); U.S. Congress, Senate Committee on Finance, *United States-Australia Free Trade Agreement Implementation Act*, Report, together with additional views, to accompany S. 2610, 108th Cong., 2nd sess., August 25, 2004, S.Rept. 108-316 (Washington: GPO, 2004); U.S. Congress, House Committee on Ways and Means, *Dominican Republic-Central America-United States Free Trade Agreement Implementation Act*, Report, together with additional and dissenting views, to accompany H.R. 3045, 109th Cong., 1st sess., July 25, 2005, H.Rept. 109-182 (Washington: GPO, 2005); U.S. Congress, Senate Committee on Finance, *Dominican Republic-Central America-United States Free Trade Agreement Implementation Act*, Report to accompany S. 1307, 109th Cong., 1st sess., August 31, 2005, S.Rept. 109-128 (Washington: GPO, 2005); U.S. Congress, House Committee on Ways and Means, *United States-Colombia Trade Promotion Agreement Implementation Act*, Report, together with dissenting views, to accompany H.R. 3078, 112th Cong., 1st sess., October 6, 2011, H.Rept. 112-237 (Washington: GPO, 2011); and U.S. Congress, Senate Committee on Finance, *United States-Colombia Trade Promotion Agreement Implementation Act*, Report, together with additional views, to accompany S. 1641, 112th Cong., 2nd sess., September 20, 2012, S.Rept. 112-222 (Washington: GPO, 2012).

[73] U.S. Congress, Senate Committee on Finance, *The Bipartisan Congressional Trade Priorities and Accountability Act of 2015*, Report to accompany S. 995, 114th Cong., 1st sess., May 12, 2015, S.Rept. 114-42 (Washington: GPO, 2015), p. 4.

[74] Corresponding statements appear also in the committee reports on the most recent previous enactment of trade promotion authority, the Bipartisan Trade Promotion Authority Act of 2002. See U.S. Congress, House Committee on Ways and Means, *Bipartisan Trade Promotion Authority Act of 2001*, Report, together with additional and dissenting views, to accompany H.R. 3005, 107th Cong., 1st sess., October 16, 2001, H.Rept. 107-249, Part 1 (Washington: GPO, 2001), pp. 42-43; and U.S. Congress, Senate Committee on Finance, *Bipartisan Trade Promotion Authority Act of 2002*, Report, together with additional views to accompany H.R. 3005, 107th Cong., 2nd sess., February 28, 2002,

> It is the expectation of the Committee that, for any agreement subject to trade authorities procedures ... 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 [TPA] legislation. Because an implementing bill subject to trade authorities procedures is not subject to amendment, close cooperation between the executive branch and the Committees of jurisdiction prior to the bill's introduction is essential for positive consideration of the implementing bill. 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, 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 ... that this is to happen "after entering into the agreement."[75]

The report of the House Committee on Ways and Means reinforces many of the same points, but lays emphasis on additional features of the process as well:

> As in the past, there is no deadline for the submission of the legislation [i.e., the draft implementing bill] 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. The Committee believes that the informal markup process conducted before formal submission of the implementing bill provides the Congress ... ample opportunity to participate in the development of the proposed legislation and to provide their views to the Administration. The Committee fully 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. After the formal introduction, certain deadlines are appropriate because Congress has already conducted its process informally.[76]

The proceeding may be viewed as a "mock" markup because the committee has before it for action not an actual bill previously introduced and referred to it, but instead a preliminary draft prepared by the Administration, or one developed by the committee on the basis of the information submitted or available to them, or developed by both in collaboration. Correspondingly, the proceeding does not conclude with a vote to order an actual measure reported to the floor, but rather with the transmission to the President of the committee-supported proposal.

Otherwise, nevertheless, it appears that the proceedings in a mock markup are much like those of a formal markup. Committee reports on recent trade acts, as well past practice under trade acts, shows that the revenue committees approach mock markups as their opportunity to recommend to

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S.Rept. 107-139 (Washington: GPO, 2002), p. 50.

[75] U.S. Congress, Senate Committee on Finance, *The Bipartisan Congressional Trade Priorities and Accountability Act of 2015*, Report to accompany S. 995, 114th Cong., 1st sess., May 12, 2015, S.Rept. 114-42 (Washington: GPO, 2015), pp. 42-43.

[76] U.S. Congress, House Committee on Ways and Means, *Bipartisan Congressional Trade Priorities and Accountability Act of 2015*, Report, together with dissenting views, to accompany H.R. 1890, 114th Cong., 1st sess., May 1, 2015, H.Rept. 114-100, Part 1 (Washington: GPO, 2015), p. 72. See also U.S. Congress, Senate Committee on Finance, *The Bipartisan Congressional Trade Priorities and Accountability Act of 2015*, Report to accompany S. 995, 114th Cong., 1st sess., May 12, 2015, S.Rept. 114-42 (Washington: GPO, 2015), p. 42.

the President the terms they believe the implementing bill should contain, and to communicate their views about what terms they would find acceptable.[77] The information obtained through the preceding consultations with and submissions from the executive branch allows the committees to assess the extent to which the agreement advances the objectives set forth in the statute and also to identify concerns about its terms and content. In addition, as committee reports that later accompany the formal implementing bills make clear, Administration representatives have frequently been present to participate in the process of the mock markup itself.

In a mock markup, committees have often considered and adopted amendments to the draft being considered, and debate on these amendments has often manifested an explicit concern with whether the "changes in law or new statutory authority" that the committees may recommend are "strictly necessary and appropriate" to the implementation of the agreement, as the BCTPAA requires for an implementing bill. Because these same committees also exercise substantial control over the mechanisms by which Congress determines the eligibility of an implementing bill for expedited consideration under the act (as discussed later), their judgment about what provisions are "necessary and appropriate" may normally be expected, as a practical matter, to determine the meaning of that term in relation to a specific agreement.

It appears that each revenue committee typically holds its own mock markup. In earlier cases, these separate markups seem typically to have been followed by a "mock conference" to arrive at a single proposal to present to the President, but in more recent years it appears that each committee has typically transmitted its own proposal separately, with the expectation that the executive would consult with the two committees in synthesizing a final version to be formally submitted to Congress.[78]

Inasmuch as the BCTPAA makes no formal provision for the mock markup, the President is not required to submit the draft implementing bill in a form proposed by revenue committees. If he submits a draft in a different form, however, the revenue committees would be able to use the means provided by the act (discussed later, in the section on "Means of Withdrawing Expedited Consideration") to propose that Congress deny the measure eligibility for expedited consideration. It is also possible that if the revenue committees found a covered trade agreement unsatisfactory, they might decline to hold a mock markup at all. In that case the provisions of the BCTPAA would place no formal obstacle to President's submission of his own draft implementing bill, without their input.[79] In that case as well, however, the committees could then

[77] See, for example, the committee reports cited in footnote 72, and also "U.S. Senator Charles E. Grassley (R-IA) Holds Mock Markup on U.S. Central America-Dominican Republic Free Trade Agreement*," Political Transcript Wire*, June 14, 2005.

[78] References to the features of mock markups just discussed appear among the committee reports cited in footnote 72 and those on other trade agreements.

[79] Such a course of events occurred in 2008 in relation to a free trade agreement with Colombia. The United States entered into this agreement in August 2006, but by early 2008 the Administration and the revenue committees had reached no agreement about certain issues connected with the agreement, and the committees had held no mock markups. On April 8, 2008, the Administration submitted a draft implementing bill of its own construction for the agreement, which was introduced in both chambers in accordance with the statute. See Sen. Max Baucus, "United States-Colombia Trade Promotion Agreement," remarks in the Senate, *Congressional Record*, vol. 154, part 4 (April 8, 2008), pp. 5319-5320; Sen. Chuck Grassley, "Colombia Free Trade Agreement," remarks in the Senate, *Congressional Record*, vol. 154, part 4 (April 8, 2008), pp. 5334-5335; President George W. Bush, "Legislation and Supporting Documents to Implement the United States-Colombia Trade Promotion Agreement—PM 43," message from the President, *Congressional Record*, vol. 154, part 4 (April 8, 2008), pp. 5340-5341; President George W. Bush, "United States-Colombia Trade Promotion Agreement—Message from the President of the United States (H.Doc. No. 110-103)," message from the President, *Congressional Record*, vol. 154, part 4 (April 8, 2008), pp. 5369-5370; Rep. David Dreier, "The Hugo Chavez Rule," remarks in the House, *Congressional Record*, vol. 154, part 4 (April 10, 2008), p.

use the mechanisms discussed in the last part of this report to allow Congress to deny the measure expedited consideration.[80]

For these reasons, the mock markup plays a potentially crucial role in making effective the mechanisms provided by the BCTPAA to allow Congress, especially through the agency of its revenue committees, to exercise control over the content of legislation to implement trade agreements before its formal introduction. It is, accordingly, these mechanisms as a whole that may compensate, to a substantial degree, for the restrictions placed by the act on Congress's ability to exercise its normal range of control over the measure's content during the formal legislative process.

Statutory Procedures for Expedited Consideration

The expedited "trade authorities procedures" in Section 151 of the Trade Act of 1974 provide for (1) the introduction and referral of the measure, (2) committee action, (3) proceeding to the measure's consideration, (4) conditions of floor consideration, and (5) coordinating the action of the two chambers for presentation of the measure to the President. In practice, each house has often considered implementing bills under procedures other than those provided by the statute or under a modified version. Each chamber can implement such modifications pursuant to its constitutional power to make and alter its own rules, which Section 106(e) of the BCTPAA explicitly acknowledges can be used for this purpose.[81] The House has generally implemented such alterations by adopting a special rule, reported by the Committee on Rules, for consideration of the measure. The Senate has done so pursuant to a unanimous consent agreement for consideration. For the reasons previously discussed in the section on "Statutory Means of Congressional Control," however, these modified terms of consideration have generally retained the prohibition on amendment to the measure.

Introduction and Referral

Under the procedures of Section 151, when the President submits to Congress a draft implementing bill for a covered trade agreement and its required supporting materials, the draft is to be formally introduced as a bill in each chamber by the two party floor leaders (or their designees), acting jointly. They are to introduce the implementing bill "by request," a phrase used to indicate that the sponsor of a measure does not necessarily advocate its enactment.[82]

Questions are sometimes raised about the possibility that the floor leaders might not carry out this statutory mandate. The statutory provision (which is similar to ones appearing in various other statutory expedited procedures) does not address this possibility. Rather, the provision reflects a presumption that it grants no discretionary power, but, instead, simply operates as a rule of each chamber, obligating the leaders to carry out its requirement as a ministerial act. If any leaders

5632; and "Relating to the Consideration of H.R. 5724, United States-Colombia Trade Promotion Agreement Implementing Act," debate and vote in the House, *Congressional Record*, vol. 154, part 4 (April 10, 2008), pp. 5640-5654.

[80] In the case of the agreement with Colombia described in the previous note, the House on April 10, 2008, agreed to a resolution (H.Res. 1092) providing that the expedited procedures of the Trade Act for the House would not apply to the House bill (H.R. 5724). "Relating to the Consideration of H.R. 5724, United States-Colombia Trade Promotion Agreement Implementing Act," debate and vote in the House, *Congressional Record*, vol. 154, part 4 (April 10, 2008), pp. 5640-5654.

[81] Such a provision appears routinely in most statutes establishing expedited procedures.

[82] Trade Act of 1974, §151(c); 19 U.S.C. 2191(c).

were reluctant to introduce the implementing bill because they opposed the trade agreement in question, they could consider the phrase "by request" as representing an accommodation to their personal views, or they could take advantage of the provision's option to delegate their responsibility to Members favorable to the measure.

The introduction of the implementing bill starts a statutory timetable for action intended to ensure that each chamber can consider and vote on the measure under the expedited procedure.[83] Essentially, this timetable assures the committee(s) of referral in each chamber of 45 days of session in that chamber to act on the implementing bill, and each full chamber up to 15 days of session for floor action. The timetable also orchestrates the successive action of the two chambers in such a way that the maximum total time for congressional consideration cannot exceed 90 days of session in the respective chambers.[84]

Depending on the point in the annual session of Congress at which the President submits the implementing bill, Congress could adjourn that annual session *sine die* before it completes action on the bill and before the 90 session days allowed for expedited action are exhausted. If the session is the first session of a Congress, there appears to be no reason why Congress could not continue action under the statute in its second session. The implementing bill would remain available for further action, and the count of days of session could resume from the point at which it left off. If the *sine die* adjournment comes at the end of the two-year term of a Congress, on the other hand, the implementing bill (like all other pending legislation) dies with the adjournment. Unlike some expedited procedure statutes, neither the Trade Act of 1974 nor the BCTPAA makes explicit provision for the renewal of action in the next Congress. It appears that the Senate, at least, might permit expedited action on an implementing bill to proceed *de novo*, but only if the President re-submitted the implementing bill in the new Congress as provided by the BCTPAA.

Committee Action

Section 151 provides that an implementing bill is to be referred to the "appropriate" committee or committees in each chamber.[85] The primary committees of referral would undoubtedly be the respective revenue committees. Referral to other committees (for example, the Committees on Agriculture) would depend on the subjects addressed by the trade agreement.

The act's prohibition against amendment of an implementing bill limits the options available to a committee for action on the measure. It may vote to report the bill, vote against reporting it, or hold no vote on the matter. If it chooses the first option, it may report the bill either favorably (the usual form of reporting), adversely, or without recommendation. Even if a committee does not vote to report, however, it cannot prevent its chamber from considering the measure, for under the statute, if a committee of referral does not report the implementing bill by the 45th day of session of that chamber after its introduction, the committee is automatically discharged from further consideration of the bill.[86]

[83] Trade Act of 1974, §151(e); 19 U.S.C. 2191(e).

[84] Trade Act of 1974, §151(e)(3); 19 U.S.C. 2191(e)(3). A "day of session" is any day during some portion of which a floor session of the chamber in question occurs. *Pro forma* sessions are included in the count. For discussion of the implications of this way of counting, see CRS Report R42977, *Sessions, Adjournments, and Recesses of Congress*, by Richard S. Beth and Jessica Tollestrup.

[85] Trade Act of 1974, §151(c); 19 U.S.C. 2191(c).

[86] The committee could, on the other hand, attempt to make use of one of the procedures, described in more detail later, for denying expedited consideration to the implementing bill altogether.

If the implementing bill contains revenue provisions (called an "implementing revenue bill")—as is most likely—the requirement for the committee to report or be discharged does not apply to the Senate bill. Instead, if the Senate receives an implementing revenue bill passed by the House, it is to refer that bill to committee, and the period of 45 days of session for committee action is extended as necessary to give the Senate committee(s) at least 15 session days to consider the House bill. In this case, it is then the House bill that the Senate committee(s) must report or be discharged from, and that the Senate is to consider.[87] These modifications accommodate the constitutional requirement that revenue legislation originate in the House.[88]

Proceeding to Consideration

Once the committees of referral in either chamber have reported an implementing bill or been discharged from its consideration, the bill is placed on the chamber's calendar of business, which is its list of measures available for floor consideration.[89] The statutory timetable for action established by Section 151 requires that in either chamber, once this point is reached, a final vote on the implementing bill is to occur by the end of the 15th following day of session.[90] To facilitate this result, the statute provides, in each house, for a privileged, non-debatable motion to proceed to consider the measure. This motion to proceed cannot be amended, and the vote thereon may not be reconsidered.[91]

In both chambers, making the motion to proceed privileged and non-debatable has important consequences. In the House, the privileged status means that a Member may offer the motion from the floor without further authorization, so that the Committee on Rules cannot prevent consideration of the measure by declining to report a special rule for the purpose. In the Senate, if a motion to proceed is privileged, it is non-debatable, which means that no necessity can arise for obtaining a 60-vote super-majority to invoke cloture in order to limit debate on the motion. Under the general rules of both chambers, of course, the motion to proceed itself can be adopted by a majority of Members voting (with a quorum present).[92]

Although the act is not explicit on the point, there appears to be no reason, either under the act or under the general rules of either chamber, why, if a motion to proceed was rejected in either chamber, another such motion might not be offered. This procedure nevertheless leaves open the possibility that throughout the stipulated period of 15 days of session, a chamber will fail to adopt any motion to proceed, or even that none will ever be offered. In such a case it is not clear how—or even whether—the chamber might implement the statutory requirement to hold a vote on the implementing bill by the end of that period.

[87] Trade Act of 1974, §151(e)(2); 19 U.S.C. 2191(e)(2).

[88] The practical meaning of this requirement is that the measure enacted must bear a House bill number (i.e., H.R.___).

[89] The House has four different Calendars, each holding a different class of bill and associated with a different form of consideration. "Money bills," which include bills affecting revenues, are placed on the Union Calendar, meaning that the House is supposed to consider them in Committee of the Whole. Inasmuch as implementing bills are eligible for consideration under the statutory expedited procedure, however, this directive of the general rules is immaterial to their consideration.

[90] Trade Act of 1974, §151(e); 19 U.S.C. 2191(e).

[91] Trade Act of 1974, §151(f) and 151(g); 19 U.S.C. 2191(f) and 2191(g).

[92] A quorum is a majority of the full membership of the chamber. In the Senate, although action by a majority is often today referred to as requiring "51 votes," this standard can, in fact, be satisfied by a vote of 48 to 43, or even 27 to 24.

Floor Consideration

If either chamber votes to consider an implementing bill, Section 151 limits the time for debate on the measure to 20 hours, and provides for a non-debatable motion to limit the time further. The available time is to be equally divided: in the House, between supporters and opponents of the bill; in the Senate, between the party floor leaders or their designees.[93] The prohibition on amendment continues to apply at this stage, and the statute also precludes a motion to recommit, which is often used as an alternate means for proposing amendments.

For the House, the expedited procedure precludes debate on any motions to postpone consideration or to proceed to other business, as well as on any appeals from rulings of the chair. For the Senate, the expedited procedure limits debate on any debatable motion (such as a motion to postpone or to proceed to other business) or appeal to one hour. Any time the Senate used in debate on such questions would presumably be taken out of the overall 20-hour limit allotted by the statute.[94]

These statutory provisions are intended to ensure that each chamber can reach a final vote on the implementing bill within the period of 15 days of session after the committee reports or is discharged, as required by statute—at least once the chamber votes to consider the measure. In both houses, as with other legislation, passage of the implementing bill requires only a majority of Members voting (with a quorum present). In the House, the statute prohibits a motion to reconsider the vote on passage.

In the likely event that the trade agreement requires an implementing revenue bill, the procedures established by Section 151 require that the House act first and that the Senate then consider and vote on the measure received from the House. As noted, the statutory procedure requires the text of the measures introduced in both chambers to be identical, and its prohibition on amendment requires that they remain so. If both houses pass the House measure, as a result, they will have agreed to the same text in the same measure, so that no process of resolving differences between the two chambers' versions can be necessary, and the measure can immediately be presented to the President for his signature.[95]

Floor Consideration in Practice

A statutory limit on debate is a standard component of most expedited procedures. A limit phrased in these terms does not strictly limit the total time that can be consumed in consideration of the

[93] Trade Act of 1974, §151(f) (House) and 151(g) (Senate); 19 U.S.C. 2191(f) and 2191(g). In each chamber, this time would presumably be managed as "controlled time," meaning that each component would be placed under the control of a single Member who would yield portions of it to other Members to be recognized for debate.

[94] The hour's debate on such a question is to be equally divided and controlled by the mover of the question and the manager in favor of the bill, unless the manager favors the motion, in which case the time in opposition is controlled by the minority leader or designee. The floor leaders may also yield additional time for debate on motions and appeals from the time they control on the bill. Trade Act of 1974, §151(g)(3), 19 U.S.C. 2191(g)(3). These arrangements parallel ones that were common in unanimous consent agreements in the Senate at the time these statutory procedures were instituted.

[95] If a trade agreement were not to require an implementing *revenue* bill, either chamber could act first, and §151 directs that whichever chamber acts second is to consider its own bill under the expedited procedure, but take its final vote on the measure already received from the chamber that acted first. Trade Act of 1974, §151(e)(1), 19 U.S.C. 2191(e)(1). Inasmuch as, in this case also, the texts of the two measures must be identical, if both chambers followed this procedure to pass the bill, their action would necessarily result, under these conditions as well, in clearing a single implementing bill for presentation to the President.

measure, for time spent in making motions, in taking other procedural actions, and in votes and quorum calls, does not count against the time for debate.[96]

This limit on debate is not of central importance in the House, where the Standing Rules of the chamber already impose time limits under almost all circumstances. Instead, the most important effects of the expedited procedure in that chamber come from its provisions for automatic discharge and the privileged motion to proceed, which together help to ensure that floor consideration can occur. In practice, nevertheless, the House has seldom actually considered implementing bills pursuant to the statutory expedited procedure. Rather, as mentioned earlier, the House has usually adopted a special rule, reported by the Committee on Rules, for this purpose. These special rules have typically reduced the time allowed for debate well below the statutory 20 hours, and have retained the statutory prohibition on a motion to recommit.[97]

For the Senate, on the other hand, the statutory limit on debate is of particular importance, because Senate Rules generally permit limiting the time for consideration of a measure (or other debatable question) only by unanimous consent or with the support of three-fifths of the Senate (generally 60) for cloture. In the Senate, accordingly, the statutory limit eliminates the possibility of having to assemble a 60-vote super-majority to ensure that the body will be able to proceed to a vote on passing the measure. For this reason, the Senate has generally made use of the statutory procedure when considering trade agreement implementing bills; it has frequently, however, by unanimous consent, modified the terms of consideration the statute prescribes, often providing, in particular, for a substantial reduction in the statutory 20 hours for debate. When the Senate has received an implementing bill from the House, it has usually not referred the House measure to committee, as the statute directs, but instead has almost always taken up the House measure directly, without awaiting any formal committee action either on that bill or on the Senate companion measure. The Senate also has often called up an implementing bill by unanimous consent, rather than by using the statutory motion to proceed.

In regulating the consideration of implementing bills, both the special rules used by the House and the unanimous consent agreements used by the Senate have typically retained the prohibition on amendment prescribed by Section 151. At least in the House, however, the prohibition on amendment may in any case represent little departure from the chamber's usual practice. In that chamber, it has long been customary to consider any revenue bill under a "closed rule"; that is, a special rule that prohibits amendment.

Means of Withdrawing Expedited Consideration

As noted in the discussion of the "Development and Significance of the "Fast Track" for Trade Agreements," the BCTPAA does not confer on the President an authority he would not otherwise possess to negotiate and enter into covered trade agreements, nor does it prohibit him from negotiating and entering into such agreements that do not meet the extensive requirements of the act. The constitutional powers of the President in the area of foreign relations would doubtless suffice to authorize such negotiations and the powers of Congress in the areas of commerce and revenues would require that any trade agreement of the kind covered by the pertinent provisions of the BCTPAA be implemented by legislation. Rather, the substance of the "trade promotion

[96] A rule of thumb sometimes cited is that one hour of controlled time for debate typically results in an hour and a half of clock time spent in consideration.

[97] Clause 6(c) of House Rule XIII prohibits the Committee on Rules from reporting a resolution that would prevent a motion to recommit, but in the case of an implementing bill for a covered trade agreement, such a provision may be included pursuant to the statutory prohibition on the motion to recommit.

authority" provided by the BCTPAA (and its predecessors) is that if a trade agreement, its negotiation, and its submission to Congress conform to the requirements previously discussed, then its implementing bill becomes eligible for expedited consideration under the trade authorities procedures of Section 151 (and otherwise not).[98]

These statutory conditions provide incentive for the executive to conduct trade negotiations in ways that do meet those requirements. In this way, the act affords Congress a more direct means of control over the substance of a covered trade agreement, as well as the process of negotiating it, than would be provided solely by the statutory stipulations of these requirements. These requirements, however, are not self-enforcing, which means that these arrangements still leave open the question of how it would be determined whether or not a specific covered trade agreement meets the requirements. Further provisions of the BCTPAA, accordingly, address this consideration by specifying who may assess whether compliance has been achieved and means of implementing consequences for lack of compliance.

The chief compliance mechanisms provided by the BCTPAA are (1) the procedural disapproval resolution, (2) the consultation and compliance resolutions in each chamber, and (3) a resolution

[98] The key provisions in this respect appear in BCTPAA Section 103(b) (19 U.S.C. 4202(b)(2)), which establishes TPA. §103(b)(2) (19 U.S.C. 4202(b)(2)) provides that "A trade agreement may be entered into *under this subsection* only if such agreement makes progress in meeting the applicable objectives described in subsections (a) and (b) of section 102 and the President satisfies the conditions set forth in sections 104 and 105" (emphasis added). (§104 covers "Congressional Oversight, Consultations, and Access to Information," and §105 covers "Notices, Consultations, and Reports.") Correspondingly, among the conditions that Section 103(b)(3) (19 U.S.C. 4202(b)(3)) requires for an implementing bill to be eligible for expedited consideration under the "trade authorities procedures" is that the bill include "a provision approving a trade agreement entered into *under this subsection* ... " (emphasis added). Similarly, §106(a)(1) (19 U.S.C. 4205(a)(1) provides: "Any agreement entered into *under section 103(b)* shall enter into force with respect to the United States if (and only if)" the requirements of §106(a) in relation to the submission of the implementing bill are met (emphasis added).

Other provisions of the BCTPAA reinforce these directives with respect to the specific requirements they establish, explicitly stating that those requirements apply with respect to "negotiations conducted under" the provisions of the act that establish TPA (e.g., BCTPAA, §104(a)(1); 19 U.S.C. 4203(a)(1)), or "before entering into any trade agreement under" such provisions, (e.g., BCTPAA, §105(b)(1); 19 U.S.C. 4204(b)(1)),or "with respect to any agreement that is subject to" such provisions (e.g., BCTPAA, §105(a)(1); 19 U.S.C. 4204(a)(1)). Additional examples appear at BCTPAA, §103(b)(2), 103(b)(3), 106(a)(1), and 106(b)(6); 19 U.S.C. 4202(b)(2), 4202(b)(3), 4205(a)(1), and 4205(b)(6).

Even if the BCTPAA purported to prohibit the President altogether from entering into covered trade agreements that did not meet the requirements of the act, or to prohibit Congress altogether from enacting legislation to implement such agreements, it could not effectively do so; if the President were to conclude such an agreement, Congress could still choose to enact legislation to implement the agreement under its plenary legislative power and pursuant to its regular legislative processes. Such legislation would still have the force of law and, as a later enactment, would undoubtedly be held to supersede any contrary provisions of the BCTPAA. In debate on the resolution to withdraw expedited consideration from the implementing bill for the trade agreement with Colombia in 2008, supporters of the resolution offered the argument that its adoption would not preclude consideration of the implementing bill, but only its consideration under the expedited procedure (in the event, however, after adopting the resolution, the House at no point took up the bill). "Relating to the Consideration of H.R. 5724, United States-Colombia Trade Promotion Agreement Implementing Act," debate and vote in the House, *Congressional Record*, vol. 154, part 4 (April 10, 2008), pp. 5640-5654.

Even more broadly, the President might negotiate a trade agreement having provisions, or through processes, that had no conformity with the restrictions of the BCTPAA so that no question would arise of its being eligible for expedited consideration under the act in the first place. Inasmuch as such an agreement would not have been reached pursuant to any special statutory arrangements, it presumably could be implemented only through legislation enacted under the regular lawmaking process of the Constitution, with Congress retaining the power to amend such legislation or decline to consider it (although it could, also, choose to consider it under terms similar to those provided by the BCPTAA). This is the sense, alluded to at the outset of this report, in which the BCTPAA confers no additional powers on the President, but only provides specific procedural advantages to certain products of the exercise of his general constitutional powers that meet specified requirements.

addressing provisions in trade agreements that affect trade remedy laws. The mechanism of the procedural disapproval resolution, which has evolved into its present form in the course of several earlier iterations of trade laws, requires parallel action in both chambers. The consultation and compliance resolution, made available for the first time by the BCTPAA, may be used by either house to withdraw eligibility for expedited consideration in that chamber. The potential effect of the resolution addressing trade remedy laws, versions of which also appear in some previous trade statutes, appears to be more ambiguous. Finally, the principal means available under general congressional rules to deny expedited consideration to an implementing bill might be a special rule in the House or a point of order in either chamber.

Most of these provisions for fostering compliance with the requirements of the act are constructed to place the initiative for their use in the hands of the revenue committees. They thereby reinforce the central role these panels play in determining whether a given trade agreement should be treated as covered under these provisions of the act and, more broadly, their position as the chief guardians of the legislative prerogatives and interests of Congress in the area of trade legislation and revenues in general. In practice, moreover, it is these panels that, because of their central role in carrying out the responsibilities of Congress for revenue legislation in general, and trade agreements in particular, will normally be best aware of the content of a covered trade agreement, the processes of negotiating it and submitting the implementing bill, and whether the pertinent statutory requirements have been met. Accordingly, these committees may be expected most likely to initiate the use of the compliance mechanisms of the BCTPAA to ensure that the executive will negotiate covered trade agreements in a way that meets the requirements of the act and the preferences of Congress.

In general, as the following sections discuss, the compliance mechanisms of the act are each prescribed as a remedy for failure to meet specified kinds of requirement. On the other hand, the BCTPAA does not always identify specific procedural mechanisms as remedies for failure to meet specific requirements, and some requirements are not explicitly associated with any specific means of fostering compliance. In practice, nevertheless, it appears that if Congress considered a covered trade agreement not to have met requirements of the act, it might use any of the BCTPAA's available compliance mechanisms to withdraw expedited consideration from the implementing bill. Congress presumably retains the discretion to use any of the procedural mechanisms the BCTPAA makes available to withhold expedited consideration from an implementing bill on any grounds specified in the act. Even if a covered trade agreement met the pertinent requirements of the BCTPAA, moreover, Congress might, in practice, still use the procedural mechanisms available under the act to withdraw expedited consideration from the agreement for any reason it chose, including substantive opposition to the terms of the agreement. In these cases as well, the revenue committees might be best able, and most likely, to assess whether or not a covered trade agreement had met the requirements of the act or whether the implementing bill should receive expedited consideration.

There are also procedures integral to the general legislative process in each chamber that could be used as means of denying expedited consideration to an implementing bill that failed to meet any BCTPAA requirements. Such procedures also, accordingly, could be used to maintain the legislative prerogatives of Congress in this area and ensure compliance with BCTPAA requirements. The availability of these procedural mechanisms as means for Congress to maintain control of implementing legislation is indicated by the declarations (in both the Trade Act of 1974 and the BCTPAA) that Congress has enacted their procedural provisions as exercises of the constitutional rulemaking power of the respective chambers, and that those procedural provisions

are therefore subject to being overridden or altered in each chamber by a further exercise of that power.[99]

The general rules of the two chambers, of course, are not framed with any specific reference to requirements for trade agreements, nor is their use the specific prerogative of the revenue panels. Nevertheless, the chief initiative in using these general procedures, as well as those provided by the BCTPAA, to deny expedited consideration to a covered trade agreement, and for assessing the appropriateness of doing so, might again be expected normally to lie with the revenue committees.

Finally, however, if either chamber of Congress were to deny expedited consideration to an implementing bill for whatever reason and by whatever available means, the bill might, in principle, remain eligible for consideration under the general legislative procedures. Congress, in other words, could always choose to implement a covered trade agreement through the regular lawmaking process, wherein it would retain full power to alter the proposal through amendment, or to decline to act.

The following sections of this report discuss these various compliance mechanisms in an order that facilitates explaining the relationships among them.

Procedural Disapproval Resolution

In the course of successive trade acts, the procedural disapproval resolution (PDR) has developed into a means for Congress to deny expedited consideration to a specific implementing bill if it judges that the trade agreement does not meet the substantive requirements of the BCTPAA. The act makes this form of action workable in practice by providing that the PDR itself be considered under an expedited procedure established in Section 152 of the Trade Act of 1974.

As currently provided in the BCTPAA (similarly to previous trade acts), a PDR is a simple resolution of either chamber,[100] which means that its adoption requires action only in the chamber of origin. An implementing bill becomes ineligible for expedited consideration, however, only if each chamber adopts its own PDR on the same trade agreement within 60 calendar days of the other.[101] The BCTPAA, in other words, allows Congress to withdraw expedited consideration by this process only through action by *both* chambers. If one chamber adopts a PDR with respect to a specific trade agreement, the expedited procedures will continue to apply to the implementing bill in both chambers unless the other chamber also adopts its own PDR within 60 days thereafter. This limitation on the effectiveness of the PDR is one reason that the BCTPAA establishes the additional mechanisms, described later, by which a single chamber may control the application of the expedited procedure in its own proceedings.

The statute prescribes that the text of a PDR must state solely that "the President has failed or refused to notify or consult" in accordance with statutory requirements "with respect to" a specified trade agreement "and, therefore, the trade authorities procedures ... shall not apply to any implementing bill submitted with respect to such trade agreement."[102] The BCTPAA goes on

[99] Trade Act of 1974, §151(a), 19 U.S.C. 2191(a); Bipartisan Congressional Trade Priorities and Accountability Act of 2015, §106(c), 19 U.S.C. 4205(c).

[100] That is, a measure with the designation "H.Res." or "S.Res."

[101] BCPTAA §106(b)(1)(A), 19 U.S.C. 4205(b)(1(A).

[102] BCTPAA §106(b)(1), 19 U.S.C. 4205(b)(1). These provisions, allowing Congress to withdraw expedited consideration from the implementing bill for a specific trade agreement, were first instituted in the Bipartisan Trade Promotion Authority Act of 2002 (Title XXI of the Trade Act of 2002, P.L. 107-210, 116 Stat. 933 at 993-1022).

to specify that "failure or refusal to notify or consult" includes not carrying out the extensive consultations required by Sections 104 and 105 of the act, as well as failing to develop guidelines for such consultations as required by Sections 104(c)(3), 104(d), and 104(e). Finally, the BCTPAA also includes as "failing or refusing to notify or consult" the failure of the trade agreement to "make progress in achieving the purposes, policies, priorities, and objectives" of the act, as defined principally in Section 102.

On the other hand, the provisions of the act that specify the meaning of "failure or refusal to notify or consult" do not make explicit reference to the notification or other informational requirements of Sections 104 and 105. Nor does the BCTPAA explicitly include any failure to meet requirements of Section 106(a) for the submission of an implementing bill as grounds for adoption of a PDR. As suggested earlier, however, Congress might in practice use a PDR in response to any perceived failure to meet any statutory requirement, even if the BCTPAA does not explicitly authorize the use of a PDR in those specific circumstances.

These provisions place solely in the hands of Congress the judgment of whether its requirements for consultation have been met, or whether a trade agreement makes sufficient progress toward the objectives it established in the BCTPAA. It thereby accords Congress, in practice, the ultimate power to determine whether any given trade agreement meets the conditions it established as appropriate in enacting the statute, and thereby also to determine whether the implementing bill is eligible for expedited consideration.

As established by the BCTPAA, however, the mechanism of the PDR makes the judgment of the revenue committees on these questions crucial to the exercise of this power. Although any Member of Congress may submit a PDR in his or her chamber, the BCTPAA makes floor consideration of the resolution out of order unless it is reported by its committees of referral (in the House, the Committee on Ways and Means and the Committee on Rules; in the Senate, the Committee on Finance).[103] Unlike the case of an implementing bill, the committees are not automatically discharged under the act if they fail to report. This arrangement leaves with the committees that (1) have primary jurisdiction over a bill to implement a trade agreement, and (2) can be expected, through the consultations and notifications required by Sections 105 and 106 of the BCTPAA, to be most closely involved in the process of negotiation, the power to judge whether those consultations and notifications have been adequately carried out and whether the results of the negotiations sufficiently advance the objectives for trade agreements established in the statute.[104]

The committees of referral may not amend a PDR.[105] If, for some reason, a committee thought language other than that required by the statute would be more appropriate to a given case, it

Previously, a PDR could be used only to terminate altogether the availability of the expedited procedures of Section 151 for all trade agreements. In either form, the mechanism has never been used.

[103] BCTPAA, §106(b)(2), 19 U.S.C. 4205(b)(2).

[104] It might be possible, in the House, to override this prohibition by using the "discharge rule" (clause 2 of House Rule XV) to discharge the Committee on Rules from consideration of a special rule providing for consideration of a PDR despite the statutory prohibition. Presumably, such action would be admissible under the declaration of §106(c) of the BCTPAA that either house can override the procedural provisions of the act through the chamber's constitutional power over its own rules. For detailed information on use of the "discharge rule," see "Discharging Measures from Committees," chap. 19 in W[illia]m Holmes Brown, Parliamentarian of the House 1974-1994, Charles W. Johnson, Parliamentarian of the House 1994-2004, and John V. Sullivan, Parliamentarian of the House 2004- , *House Practice: A Guide to the Rules, Precedents, and Procedures of the House* (Washington: GPO, 2011), pp. 457-464; and CRS Report 97-552, *The Discharge Rule in the House: Principal Features and Uses*, by Richard S. Beth.

[105] BCTPAA, §106(b)(2)(A)(i)(III) and 106(b)(2)(A)(ii)(III), 19 U.S.C. 4205(b)(2)(i)(III) and 4205(b)(2)(ii)(III).

could consider and report an alternative resolution framed in such language. The BCTPAA, however, would accord such an alternative measure no eligibility for expedited consideration.

In each chamber, if the respective committees of referral report a PDR, it becomes eligible for consideration by the chamber under statutory expedited procedures, but only if it is the first PDR reported with respect to that trade agreement in that chamber. The prescribed expedited procedures are separate from (though similar to) those provided by the Trade Act of 1974 for implementing bills,[106] being set forth in Section 152(d) and 152(e) of that act.[107] Under these provisions, the motion to proceed to consideration of a PDR in each chamber is privileged and not debatable. Such a motion may not be amended, nor may the vote thereon be reconsidered.[108] Debate on the resolution itself is limited to 20 hours, equally divided: in the House, between supporters and opponents of the resolution, and in the Senate, between the majority and minority leaders or their designees.[109] In each chamber, this time may be further limited by adoption of a non-debatable motion. Neither an amendment nor a motion to recommit (which, as noted earlier, could be used with amendatory effect) is in order during consideration. In the House, motions to postpone consideration or to proceed to other business, as well as appeals on procedural questions arising during consideration, are not debatable. In the Senate, debate on any debatable motion or appeal is limited to one hour.[110] In each chamber, a PDR can be adopted by majority vote, and in the Senate, the limit on debate precludes any necessity for obtaining super-majority support for cloture in order to reach a vote.

The expedited procedure of Section 152 prohibits a motion to reconsider a final vote on a PDR. In conjunction with the requirement that in each chamber, only the first PDR reported is eligible for expedited consideration, this prohibition means that each chamber will have only one opportunity to use the PDR procedure to remove the eligibility of any given implementing bill for expedited consideration.

On the other hand, neither the BCTPAA itself nor Section 152 appears to limit the time at which a Member may submit a PDR. Even before the President submits a draft implementing bill, if Members conclude that the trade agreement fails to advance the objectives of the BCTPAA, or that insufficient consultations had taken place, it appears that a PDR could be submitted. If the committees of jurisdiction concurred, the resolution could be reported and considered and adopted by a majority of the chamber.

"Trade Remedies Resolution"

A second form of resolution for which the BCTPAA provides[111] appears not to bring about substantive effects like those of the PDR, but the conditions of its use both affect and are affected by those of the PDR. The BCTPAA does not give this form of resolution a specific name, but since it addresses possible changes in trade remedy laws, this report will refer to it as a "trade

[106] BCTPAA, §106(b)(2)(B); 19 U.S.C. 4205(b)(2)(B).

[107] 19 U.S.C. 2192(d) and 2192(e).

[108] As in the procedure of §151 for an implementing bill, the statute does not make explicit whether the privileged motion to proceed, if defeated, may be repeated.

[109] In each chamber, as with implementing bills, each half of this time would presumably be placed under the control of a single Member who would yield portions of it to other Members to be recognized for debate.

[110] This time would be controlled in essentially the same way as provided for an implementing bill. See footnote 93.

[111] BCPTAA §105(b)(3), 19 U.S.C. 4204(b)(3). §2104(d)(3) of the most recent previous trade promotion authority law, the Bipartisan Trade Promotion Authority Act of 2002 (Title XXI of the Trade Act of 2002, P.L. 107-210, 116 Stat. 933 at 1011-1012; 19 U.S.C. 2804(d)(3)), contained a similar provision.

remedies resolution" (TRR). Like the PDR, a TRR is a simple resolution of either chamber, may be introduced by any Member of the respective chamber, and is referred to the respective revenue committee (and, in the House, also to the Committee on Rules). The committees may not amend the resolution; it may receive floor consideration in either chamber only if reported by the respective committee(s), and either chamber would consider it under the expedited procedures of Section 152(d) and 152(e) of the Trade Act of 1974. Also as with the PDR, these procedural regulations apply, in each chamber, only to the first TRR reported with respect to a given presidential report on trade remedy laws.[112]

Unlike the PDR, however, a TRR may be submitted only in response to the report by the President (listed above in the section on reports and notifications) on proposals that may be included in a trade agreement under negotiation and that could require changes in U.S. trade remedy laws.[113] The President is to submit this report to the revenue committees at least 180 days before entering into (signing) the trade agreement in question. Although the BCTPAA mandates the text of the TRR (as it does for the PDR), the mandated text in this case consists only of a finding that "the proposed changes to United States trade remedy laws contained in the report ... are inconsistent with the negotiating objectives ... described in section 102(b)(16)" of the BCTPAA (which bears the heading "Dispute settlement and enforcement"). The mandated text includes no provision withdrawing expedited consideration from an implementing bill, and the statutory provision specifies no other consequences of adopting a TRR. Rather, the TRR seems designed to allow the revenue committees, in the course of negotiations for a trade agreement, to warn against the inclusion of provisions altering trade remedy laws in ways they might find unacceptable.

Yet this clause of the BCTPAA also provides that the expedited procedures it prescribes apply to a TRR in either chamber only if the respective revenue committee has not previously reported a PDR relating to the same trade agreement. If one of the revenue committees judged that prospective changes to trade remedy laws identified in a presidential report were inconsistent with statutory objectives in this area, it could not address the issue by obtaining expedited consideration for both a PDR and a TRR. By reporting a PDR instead of a TRR, it could secure expedited consideration for a measure that would withdraw expedited consideration from the implementing bill. (The committee could still choose to report a TRR afterwards and seek consideration of that vehicle under the general rules of the chamber.)

Finally, however, the provisions of the BCTPAA regulating the PDR contain corresponding language with respect to the TRR. That is, they provide that a PDR is eligible for expedited consideration in either chamber only if no TRR with respect to the same trade agreement has previously been reported in that chamber.[114] Under this provision, it appears that, at least for any trade agreement on which the President was required to report on potential changes in trade remedy laws, the revenue committee in either chamber could, by reporting a TRR, immunize the implementing bill in advance against being made ineligible for expedited consideration through a PDR. Reporting a TRR on the agreement would preclude use of a PDR thereon, and even if the TRR were to be adopted, it would apparently not affect the use of the expedited procedure for the implementing bill.

[112] Presumably, the provisions governing proceedings in committee would be held applicable to any TRR for a given trade agreement until the point at which some such resolution was reported.

[113] The BCPTAA identifies as trade remedy laws title VII of the Tariff Act of 1930 (19 U.S.C. 1671 *et seq*.) or chapter 1 of title II of the Trade Act of 1974 (19 U.S.C. 2251 *et seq*.). For information on these laws, see CRS In Focus IF10018, *Trade Remedies: Antidumping and Countervailing Duties*, by Vivian C. Jones.

[114] BCTPAA, §106(b)(2)(B); 19 U.S.C. 4205(b)(2)(B).

Denying Expedited Consideration Through General Chamber Rules

Under the PDR mechanism, as already noted, the expedited procedures of the Trade Act of 1974 remain available in both chambers unless each chamber adopts the required resolution. Independent of that mechanism, however, either chamber could act under its own rules to preclude its own use of the expedited procedure, and as a practical matter, such action would render the statutory provision for expedited consideration ineffective for Congress as a whole. In the chamber that declined to use the expedited procedure, no guarantee would remain that the implementing bill would reach a final vote, that it would be brought up for consideration on the floor in the first place, or even that it would become available for floor consideration. If the chamber did take up the measure, it might adopt amendments, potentially requiring a process of resolving differences with the other body, on which no enforceable deadline could be imposed. Any of these events would suffice to vitiate the purpose of the expedited procedure to ensure that Congress as a whole would be able to complete action on an implementing bill within a delimited period of time.

If opposition to a particular trade agreement were widespread in a single chamber, that chamber might seek just such results by unilateral action to deny expedited consideration to the implementing bill. The possibility of doing so rests on the constitutional authority of each chamber to alter its rules or override them in particular instances, which is explicitly affirmed by Section 103(c) of the BCTPAA and Section 151(a) of the Trade Act of 1974. The House commonly exercises this authority by adopting "special rules," which are simple resolutions (H.Res.) establishing procedural conditions for specific measures or situations.[115] The Committee on Rules, which traditionally operates as an arm of the leadership of the majority party, has authority to report such resolutions. When reported, such resolutions are privileged for consideration,[116] and the House may adopt them by majority vote. As already mentioned, the House has, in practice, usually considered implementing bills under special rules that replace or supplement the terms of the statutory expedited procedure, rather than under the terms of the expedited procedure itself. A special rule, however, could also simply prohibit consideration of a specific implementing bill, or could provide that the trade authorities procedures of Section 151 not be available for that purpose. In 2008, the House adopted a special rule of the latter kind in relation to an implementing bill for a trade agreement with Colombia.[117] Subsequently, no floor action on any implementing bill for this agreement occurred in either chamber during that Congress.[118]

In principle, the Senate could, like the House, deny the use of expedited procedures for an implementing bill through adoption of a resolution (S.Res.), or conceivably even through its rarely-used motion to suspend the rules. In the Senate, however, these means are usually impracticable, for the Standing Rules of that chamber make most questions (including simple resolutions and motions to suspend the rules) fully debatable. This means that opponents may be able to prevent the Senate from reaching a vote by filibustering, unless supporters can first obtain a 60-vote super-majority to limit consideration by invoking cloture.[119] Moreover, although the

[115] For further discussion, see CRS Report 98-433, *Special Rules and Waivers of House Rules*, by Megan S. Lynch.

[116] In the House, privilege is a generally a necessary requirement for a measure to receive floor consideration.

[117] H.Res. 1092, 110th Congress.

[118] Ultimately, in 2011 (112th Congress), the President resubmitted the agreement and Congress passed the implementing bill, pursuant, in the House, to a special rule and the statutory procedure.

[119] For further discussion, see CRS Report RL30360, *Filibusters and Cloture in the Senate*, by Richard S. Beth and

Senate could adopt a resolution withdrawing expedited consideration from an implementing bill by majority vote,[120] the adoption of a motion to suspend the rules would itself require a two-thirds' vote.[121] It has not been the practice of the Senate to use either of these courses of action for this kind of purpose. Typically, the Senate has instead exercised its constitutional power to alter its procedural rules in specific instances only through unanimous consent agreements.

Another possibility is that a point of order might be entertained in either chamber that the statutory motion to proceed to consideration of an implementing bill was not in order because the bill did not meet some of the statutory requirements to be eligible for the act's expedited terms of consideration. Such a point of order might assert that the implementing bill lacked the form required by the statute, that it was not submitted in accordance with the statutory requirements, that the trade agreement it would implement did not meet the content requirements of the statute, or that some of the informational and consultation requirements of the statute had not been met. In either chamber, if such a point of order were to be sustained by the chair or by the chamber on appeal, the measure would presumably be rendered ineligible for consideration pursuant to the statutory expedited procedure in that chamber.[122] Such a ruling, of course, would not preclude the chamber from taking up the measure under its regular procedures, in which case amendments might be in order and only the chamber's general rules on the limitation of debate would apply.

Senate Consultation and Compliance Resolution

The Senate's lack of an effective means to deny expedited consideration to a specific implementing bill in that chamber by its own unilateral action (comparable to what the House can do by means of a special rule) became an issue in the Senate during consideration of the legislation that became the BCTPAA. The 2014 statute included a response to this concern in that

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Valerie Heitshusen

[120] "Majority vote" here, as usual in Congress, means with the support of a majority of Members voting (assuming a quorum present).

[121] In addition, offering a motion to suspend the Rules in the Senate requires one day's written notice.

[122] For detail about points of order and proceedings thereon, see CRS Report 98-307, *Points of Order, Rulings, and Appeals in the House of Representatives*, by Valerie Heitshusen, and CRS Report 98-306, *Points of Order, Rulings, and Appeals in the Senate*, by Valerie Heitshusen.

It is also conceivable that the chair might entertain a point of order on similar grounds on the day on which an implementing bill was automatically introduced. In this case, the chair (or, potentially, the full chamber on appeal) might rule that the measure, though introduced as an implementing bill, was ineligible from the start to receive action pursuant to the trade authorities procedures. In this case too, of course, an unfavorable ruling would not preclude the measure from being introduced or from being considered under the general rules of the chamber.

Inasmuch as bills are always (in the House) or normally (in the Senate) introduced without floor action, it is not clear when such a point of order might be entertained, although it could perhaps be argued that such a point of order might be admissible if raised on the same day the bill is introduced under the statute. The BCTPAA, moreover, does not explicitly provide for ensuring compliance with its requirements through points of order, and no doubt appears to have been raised in previous cases whether an implementing bill, or the circumstances under which it was submitted, met the statutory requirements. Consequently, no cases are available that might illustrate the grounds on which a measure introduced as an implementing bill might be held not to qualify for expedited consideration. Especially in the House, in addition, the chair has traditionally been reluctant to make rulings on matters unrelated to the procedural propriety of floor proceedings. Accordingly, even though, for most of the statutory requirements of the trade promotion authority, the question of whether a particular trade agreement or implementing bill had met them might be a matter of definitively ascertainable fact, the chair might be more likely to entertain, and rule on, a point of order that addressed actual proceedings on an implementing bill, or perhaps its form, than on one that challenged the conformity of its content or the performance of the related informational and consultative requirements. Yet if no such point of order were to be considered admissible, a chamber might be unable to prevent the use of the expedited procedures to consider a measure that fell entirely outside the intended scope of TPA.

it incorporated a new procedural mechanism by which the Senate might achieve such a result. Like the PDR, the new "Consultation and Compliance Resolution" (CCR) is a simple resolution (S.Res.) that the Senate could adopt by a simple majority vote. Unlike a PDR, however, a CCR is not eligible for consideration under the expedited procedures of Section 152. This arrangement leaves open the possibility that super-majority support for cloture will be needed for the Senate to reach a vote on the resolution. To that extent, the new provision still does not provide a means by which a simple majority vote of the Senate can prevent expedited consideration of an implementing bill.

As with the PDR, the BCTPAA mandates that a CCR in the Senate consist of text declaring "that the President has failed or refused to notify or consult" as required by the BCTPAA on negotiations for a specified trade agreement, "and, therefore, the trade authorities procedures under that Act shall not apply in the Senate" to any corresponding implementing bill.[123] Unlike the provisions governing the PDR, those governing the CCR do not specify that failure to notify or consult includes a failure to promote statutory objectives. In practice, nevertheless, the Senate could presumably use a CCR to deny expedited consideration to an implementing bill on the basis of whatever objections to the trade agreement it chose to entertain.

Also as with the PDR, initial control over the Senate's use of the CCR lies with the chamber's revenue committee. The BCTPAA directs that if the Committee on Finance meets to consider an implementing bill for a covered trade agreement and "fails to favorably report the bill, the committee shall report" a CCR.[124] It goes on to define a CCR to include only a resolution that has the mandated text and also originates from the Committee on Finance. Finally, it provides that the withdrawal of expedited procedures for the implementing bill applies if the CCR that the Senate adopts is one that the Committee on Finance reported.[125]

If the Committee on Finance did report a CCR, its consideration by the Senate would be subject to the Standing Rules of the chamber. Unless the Senate took the resolution up by unanimous consent, accordingly, a motion to proceed to its consideration would generally be debatable, and the Senate could limit consideration of that motion only with a 60-vote super-majority for cloture. It is only in this connection that the BCTPAA establishes any conditions to govern consideration of a CCR: "If the Senate does not agree to ... cloture on the motion to proceed ... the resolution shall be committed to the Committee on Finance."[126] The effect of this provision is that opponents of an implementing bill would have only a single opportunity to prevent its expedited consideration through use of a CCR, and to realize that opportunity they would have to secure the support of a 60-vote super-majority on the first motion for cloture on the motion to proceed to consider the CCR.

Even if the Senate invokes cloture on the motion to proceed on the first attempt, adoption of the CCR could still require (1) exhausting the 30 hours allowed for post-cloture consideration of the motion to proceed; (2) adopting the motion to proceed (requiring a majority of Senators voting); (3) moving for and obtaining cloture on the resolution itself (for which multiple attempts would be in order); (4) exhausting the 30 hours allowed post-cloture on the resolution; and finally (5) adopting the resolution (by a majority of Senators voting).

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[123] BCTPAA, §106(b)(3)(C); 19 U.S.C.4205(b)(3)(C).

[124] BCTPAA, §106(b)(3)(A); 19 U.S.C.4205 (b)(3)(A).

[125] BCTPAA, §106(b)(3)(B); 19 U.S.C.4205 (b)(3)(B). The act does not quite state explicitly that the withdrawal of expedited procedures applies *only* if the resolution was so reported. It might be argued that if the Senate adopted a resolution having the same text, but not originating from the Committee on Finance, the explicit language of the resolution should bring about the same result, as an exercise of the Senate's constitutional rulemaking power.

[126] BCTPAA, §106(b)(3)(D); 19 U.S.C.4205 (b)(3)(D).

Under these arrangements, although the CCR affords the Senate a means of withdrawing expedited consideration from an implementing bill in that chamber by its own unilateral action, it does not ensure that the Senate can do so in the absence of super-majority support. Moreover, it again provides no means of doing so except through the initiative of the Committee on Finance.

House Consultation and Compliance Resolution

Inasmuch as the BCTPAA established the CCR in the Senate as a mechanism for that body unilaterally to deny expedited consideration of an implementing bill there, Congress appears to have thought it appropriate to provide for a parallel mechanism for the House, as well. One might argue that including this mechanism overlooks that the initial purpose of the CCR was to extend to the Senate a means to take an action that the House could already accomplish by adopting a special rule. Given the established availability of special rules for this purpose, it is not clear that the House would instead use its version of the CRR to deny expedited consideration to a specific implementing bill; taking such action by adopting a special rule appears a more straightforward, convenient, and flexible means to the same end.

Like a CCR in the Senate, a consultation and compliance resolution in the House is a simple resolution of that chamber (H.Res.). The text mandated for the measure is the same as for the Senate (except for the name of the chamber to which the withdrawal of expedited procedures would apply), as are the stated reasons for which it may be adopted. Also, both the resolution and the act state that if the resolution is adopted, the expedited procedures shall not apply to the specified implementing bill.[127]

Details of the procedure for action, however, differ from those for the Senate. In the House, the CCR process is initiated if the Committee on Ways and Means reports an implementing bill "with other than a favorable recommendation" and a Member of the House then introduces a CCR on "the legislative day following the filing of" the report.[128] If introduced, the CCR is referred to the Committee on Ways and Means, which is directed to meet on the measure by the fourth following legislative day. If the committee does not report the CCR "by the sixth legislative day" after its introduction, it is automatically discharged from considering the measure.

The requirements that the CCR be separately introduced and referred, and that the committee be discharged if it does not report, appears simply to reflect the practice of the House, in contrast to the Senate, that most committees may not originate measures. The conditions for using a CCR in the House, however, are narrower than in the Senate, which may consider a CCR even if the committee does not report the implementing bill at all. In the House, if the committee allows itself to be discharged under the expedited procedure, the CCR mechanism does not become available.

As with the Senate, the BCTPAA makes no provision for expedited consideration of a CCR in the House. The measure, accordingly, could presumably receive consideration only under the general rules of the chamber. Any proceedings under these rules would involve time limits on consideration, so that the House could adopt the resolution by a simple majority vote.[129]

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[127] BCTPAA, §106(b)(4)(C) and 106(b)(4)(D); 19 U.S.C. 4205(b)(4)(C) and 4205(b)(4)(D). As with the Senate, although the act does not explicitly provide that the House may use a CCR to withdraw expedited consideration from an implementing bill because it fails to promote statutory objectives, the House could, in practice, presumably use this means to implement its judgment if it considered this requirement to have been violated.

[128] BCTPAA, §106(b)(4)(A); 19 U.S.C. 4205(b)(4)(A). "Legislative days," in the House, are normally equal to days of session; a new legislative day begins each time the House convenes after having adjourned.

[129] If the House were to consider a CCR, it would perhaps be most likely to do so under the one-hour rule, meaning that

Inasmuch as the BCTPAA does not confer privilege on a CCR in the House, however, the measure would presumably become eligible for floor consideration only through one of the general means provided in House Rules, such as adoption of a special rule reported from the Committee on Rules.[130] Under these conditions, the House might likely find it more straightforward instead to use a special rule revoking the eligibility of the implementing bill for expedited consideration, as described earlier.

Author Information

Richard S. Beth
Specialist on Congress and the Legislative Process

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Key Policy Staff

Area of Expertise	Name
Statutory Expedited Procedures; Congressional Procedure	Richard S. Beth
Statutory Expedited Procedures; Congressional Procedure	Christopher M. Davis
Trade Promotion Authority; Trade Agreements	Ian Fergusson
Trade Promotion Authority; Trade Agreements	Brock R. Williams
Constitutional Authority; International Trade	Brandon J. Murrill

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debate would normally be limited to one hour, equally divided, after which the House would normally agree to order the previous question, meaning that no amendments could be considered and an immediate final vote on adoption would occur. For details on this form of proceeding, see CRS Report 98-427, *Considering Measures in the House Under the One-Hour Rule*, by James V. Saturno.

[130] Conceivably, a CCR could reach the floor of the House also through the discharge procedure described in footnote 104.

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