

DESCRIPTION OF CHAIRMAN'S MARK TO ESTABLISH CONGRESSIONAL TRADE  
NEGOTIATING OBJECTIVES AND ENHANCED CONSULTATION REQUIREMENTS  
FOR TRADE NEGOTIATIONS,  
AND TO PROVIDE FOR CONSIDERATION OF TRADE AGREEMENTS

Scheduled for Markup  
by the  
Senate Committee on Finance  
on April 22, 2015

I. Introduction

The Senate Committee on Finance has scheduled a markup of a proposal to establish Congressional trade negotiating objectives; to grant to the President authority to enter into reciprocal trade agreements to reduce or eliminate tariff and non-tariff barriers to trade; to create Congressional oversight, consultations and reporting requirements for trade agreements; and to establish rules for the implementation of trade agreements, including limitations on trade authorities procedures. The authority granted to the President extends to agreements submitted to Congress by July 1, 2018, or if extended, by July 1, 2021. Qualifying trade agreements are those that meet the requirements of the proposal, including consultation and reporting requirements. Trade authorities procedures are the procedures by which the House of Representatives and the Senate will consider legislation to implement trade agreements. This document provides a description of the proposal.

II. Proposal

**Present Law**

In the Trade Act of 1974, Congress adopted negotiating objectives for trade agreements and trade negotiation consultation requirements, as well as procedures for the consideration of bills implementing trade agreements concerning non-tariff barriers that would apply if the President met specified requirements. The trade negotiating objectives and consultation requirements were last updated in 2002.

The consultation requirements were also last updated in 2002, with the establishment of a Congressional Oversight Group enabling certain Members of Committees with jurisdiction over matters affected by trade agreements to receive additional briefings on trade agreement negotiations.

With regard to the rules for the implementation of trade agreements, in section 151 of the Act, as an exercise of the rulemaking power of the House of Representatives and the Senate, respectively, Congress set forth rules for the consideration of implementing bills, including the mandatory introduction of such bills, automatic discharge from the committees of jurisdiction, time-limits for floor debate, and limitations on amendments, which would apply provided certain conditions were met. These procedures were renewed in 1979, 1988, 1993 (for Uruguay Round

multilateral trade agreements), and 2002. The most recent renewal of trade promotion authority expired as of July 1, 2007.

### **Description of Proposal**

The proposal establishes trade negotiating objectives for the United States; trade agreements authority for the President for trade agreements submitted to Congress before July 1, 2018, or if extended, July 1, 2021; Congressional oversight, consultation, and reporting requirements; and rules for the implementation of trade agreements, including limitations on trade authorities procedures.

#### *Trade Negotiating Objectives*

The proposal establishes overall and principal trade negotiating objectives for the United States. Under the proposal, the overall trade negotiating objectives of the United States relate to reciprocal market access; trade and investment; economic growth, living standards, competitiveness and full employment in the United States; trade and the environment; respect for worker rights and elimination of the worst forms of child labor; small businesses; the interrelated, multi-sectoral nature of trade; strengthening good governance, transparency, and the rule of law of U.S. trading partners, which contributes to the creation of more open democratic societies and the promotion of respect for internationally recognized human rights; the Internet; and legitimate U.S. domestic objectives including health or safety, essential security, and consumer interests.

Under the proposal, the principal trade negotiating objectives of the United States relate to trade in goods, trade in services, trade in agriculture, foreign investment, intellectual property, digital trade in goods and services and cross-border data flows, regulatory practices, state-owned and state-controlled enterprises, localization barriers to trade, labor and the environment, currency, World Trade Organization (WTO) and multilateral trade agreements, trade institution transparency, anti-corruption, dispute settlement and enforcement, trade remedy laws, border taxes, and textile negotiations. The proposal also establishes negotiating objectives for capacity building and other priorities.

#### *Trade Agreements Authority*

The proposal provides the President with authority to enter into trade agreements before July 1, 2018, or if extended (as described below), before July 1, 2021. The proposal provides two procedures for implementing trade agreements.

First, the proposal provides trade agreements authority for implementing agreements regarding tariff barriers. Under the proposal, the President, subject to Congressional notification requirements and certain limitations, may enter into trade agreements with foreign countries to modify duties or other import restrictions that unduly burden U.S. trade, and to proclaim changes to duties the President determines to be required or appropriate to carry out any such trade agreement. The proclamation authority does not apply to an agreement that reduces any rate of duty that is more than 5 percent at the date of enactment of the proposal by more than 50 percent,

reduces the rate of duty on import sensitive agricultural products to a rate of duty below that applicable under the Uruguay Round Agreements or a successor agreement, or increases any rate of duty above the rate that applied at the date of enactment of the proposal.

Second, the proposal provides trade agreements authority for implementing agreements regarding tariff and nontariff barriers. Under the proposal, section 151 of the Trade Act of 1974 applies to bills implementing trade agreements that address tariff and non-tariff barriers, if the implementing bill consists of a provision approving the trade agreement and only such provisions as are strictly necessary or appropriate to implement the trade agreement. An agreement may be entered into under this subsection only if it makes progress in meeting the proposal's negotiating objectives, and the proposal's consultation and reporting requirements.

The trade agreements authority provided under the proposal expires as of July 1, 2018, but may be extended to July 1, 2021, if the President requests an extension and neither House of Congress adopts a resolution disapproving of the extension.

The proposal also directs the President to pursue negotiations covering tariff and nontariff barriers affecting any industry, product, or service sector, and to expand existing sectoral agreements, when doing so is feasible and timely and would benefit the United States. It also directs the President in so doing to take into account all Congressional negotiating objectives.

#### *Congressional Oversight, Consultations, and Reporting Requirements*

The proposal provides detailed requirements for the Administration's consultations with Congress. It specifies that in the course of negotiations, the United States Trade Representative (USTR) shall meet upon request with any Member of Congress; provide access to pertinent documents, including classified materials; engage in close and timely consultation with the Senate Finance Committee and the House Ways and Means Committee; engage in close and timely consultation with the House and Senate Advisory Groups on Negotiations and with all committees of the House and the Senate with jurisdiction over laws that could be affected by a trade agreement; and engage in close and timely consultations with the House and Senate Committees on Agriculture concerning negotiations and agreements relating to agricultural trade. The proposal also states that, prior to entry into force of a trade agreement, USTR must keep Congress apprised of measures a trading partner has taken to comply with provisions that will take effect on the date the agreement enters into force.

The proposal requires USTR, in consultation with the Chairs and Ranking Members of the Senate Finance Committee and the House Ways and Means Committee, to develop within 120 days of enactment written guidelines on enhanced coordination with Congress. The guidelines are to ensure timely briefings with any Member of Congress and the sharing of information, including documents and classified information, with Members of Congress, and their staff with proper security clearances as appropriate, as well as cleared Committee staff as appropriate in light of Committee responsibilities. The proposal also provides procedures for designating individual Members as Congressional Advisers on Trade Policy and Negotiations and for consultations with those Members. Any Member of Congress may be designated a Congressional Adviser. In the course of trade negotiations, USTR must consult closely and on a

timely basis with these Congressional Advisers. USTR must accredit the advisers as official advisers to trade delegations.

The proposal establishes the House and Senate Advisory Groups on Negotiations, and sets forth membership requirements for each, including designation of the Chair and Ranking Member of any Committee that would have jurisdiction over provisions of law affected by a trade agreement. The subsection also outlines requirements for USTR to consult with and seek advice from the Advisory Groups and provides mechanisms for coordination with Members of Congress not on the Advisory Groups. Advisory Group Members must be accredited by USTR as official advisers to trade delegations. USTR, together with the Chairs and Ranking Members of the Senate Finance Committee and the House Ways and Means Committee, must develop written guidelines for the closest practicable coordination with the Advisory Groups, including detailed briefings on a fixed timetable. After a trade agreement is concluded, the proposal requires ongoing consultation regarding compliance with the agreement.

The proposal also establishes procedures for consultations with the public. USTR, together with the Chairs and Ranking Members of the Senate Finance Committee and the House Ways and Means Committee, is required to develop written guidelines for public access to information regarding trade negotiations in order to facilitate transparency, encourage public participation, and promote collaboration in the negotiation process, including through rapid disclosure of information in forms that the public can readily find and use and through frequent opportunities for public input through the Federal Register and other means.

The proposal addresses consultations with the Trade Advisory Committees created by the Trade Act of 1974. USTR, together with the Chairs and Ranking Members of the Senate Finance Committee and the House Ways and Means Committee, are required to develop written guidelines to enhance coordination with the Advisory Committees in order to provide timely briefings and opportunities for input on matters regarding sectors and functional areas the Committees represent. The subsection requires that the guidelines also set out procedures for the sharing of detailed and timely information and documents, including classified materials, to each member of an Advisory Committee and designee with proper security clearances, as appropriate.

The proposal establishes a Chief Transparency Officer at USTR, responsible for consulting with Congress on transparency policy, coordinating transparency in trade negotiations, engaging and assisting the public, and advising the USTR on transparency policy.

The proposal specifies the notice, consultations, and reports that Congress must receive before the President initiates trade negotiations, and provides that prior to entering into trade negotiations, the President must provide Congress 90 days' written notice and consult with the Senate Finance Committee, the House Ways and Means Committee, other appropriate Committees of the House and Senate, and the House and Senate Advisory Groups on Negotiations. The President must, on the USTR website, publish and regularly update a detailed and comprehensive summary of the objectives for the trade negotiations, as well as publish a description of how the trade agreement would further those objectives and benefit the United States. The proposal also establishes consultation and reporting requirements for negotiations

that concern agriculture, import sensitive products, fish or shellfish trade, and textiles and apparel.

Under the proposal, before entering into any trade agreement, the President must consult with the Senate Finance Committee, the House Ways and Means Committee, other relevant congressional Committees, and the House and Senate Advisory Groups on Negotiations. The consultations are to address the nature of the agreement, the extent to which it meets the objectives of the proposal, and the implementation of the agreement, including its general effect on existing laws. At least 180 days before entering into a trade agreement, the President is also required to report on the effect of the agreement on U.S. trade remedy laws. This proposal further describes the procedures by which the House or Senate may consider a resolution finding that proposed changes to trade remedy laws are inconsistent with the negotiating objectives concerning trade remedies, and requires submission of Advisory Committee reports within 30 days of the President's notification to Congress of his intention to enter into a trade agreement.

The proposal requires that the President, within 90 days before entering into an agreement, provide the International Trade Commission (ITC) with details of the agreement and that, not later than 105 days after the President enters into the agreement, the ITC submit a report to the President and Congress assessing the likely impact of the agreement on the U.S. economy. This report shall be made public.

The proposal sets out reports that the President shall submit to the Senate Finance Committee and the House Ways and Means Committee at the time the President submits to Congress the final text of an agreement: an environmental review of the agreement; a report regarding the impact of the trade agreement on U.S. employment; and a meaningful labor rights report with respect to the countries included in the agreement, along with a description of any provisions that would require changes to U.S. labor law and practice. The proposal also specifies that at the time the President submits to Congress the final text of an agreement, the President must submit an implementation and enforcement plan that assesses border personnel requirements, agency staffing requirements, customs infrastructure requirements, and the impact of the agreement on state and local governments. The proposal requires the submission of additional reports concerning: the effectiveness of penalties and remedies applied by the United States to enforce its rights under a trade agreement; the economic impact of all trade agreements enacted under trade authorities procedures since 1984, and to update that report within five years; and enforcement actions taken pursuant to a trade agreement. The proposal also requires USTR to consult with the Senate Finance Committee and the House Ways and Means Committee after acceptance of a petition for review or after taking an enforcement action in regard to an obligation under a trade agreement.

The proposal states that any Member of the House or Senate may submit his or her views on any matter relevant to a proposed trade agreement to the Senate Finance Committee or the House Ways and Means Committee, and the relevant Committee is to receive those views for consideration.

*Implementation of Trade Agreements and Limitations on Trade Authorities Procedures*

With respect to implementation of trade agreements, the proposal requires that, at least 90 days before entering into a trade agreement, the President must notify Congress of the President's intent to enter into that agreement and publish a notice in the Federal Register. At least 60 days before entering into the agreement, the President must publish the text of the agreement on the USTR website. Within 60 days after entering into the agreement, the President must submit a description of changes to existing laws that would be required by the agreement. At least 30 days before formally submitting the trade agreement to Congress, the President must provide to Congress a copy of the final legal text of the agreement and a draft statement of administrative action proposed to implement the agreement.

On a day on which both Houses of Congress are in session, the President must submit the final text of the agreement, a draft implementing bill, a statement of administrative action, and certain supporting information. The required supporting information consists of an explanation of how the bill and statement of administrative action will change or affect existing law, a statement asserting that the agreement makes progress in achieving the objectives of this proposal and setting forth the reasons it does so, whether and how the agreement changes provisions of an agreement previously negotiated, how the agreement serves the interests of U.S. commerce, and how the implementing bill meets the requirements set out in subsection 3(b)(3). The supporting information shall be made public.

The proposal also requires that implementing bills include a provision on reciprocal benefits to ensure that foreign countries not party to the agreement do not receive benefits under the agreement unless they are subject to the agreement's obligations, by providing that the benefits and obligations of the agreement apply only to the parties, if such application is consistent with the agreement. It further provides that any agreement with a foreign government that is not disclosed before the introduction of an implementing bill shall not be considered part of the agreement and will have no force in U.S. law or in any dispute settlement body.

The proposal sets forth limitation on trade authorities procedures, and the processes and procedures for disapproval of the use of trade authorities procedures if the President has failed or refused to notify or consult in accordance with this Act. First, the proposal establishes a procedural disapproval resolution process by which both chambers of Congress, acting jointly, may withdraw trade authorities procedures on an expedited basis. Second, the proposal sets forth the consultation and compliance resolution processes by which each chamber of Congress may unilaterally withdraw trade authorities procedures for that chamber.

The proposal states that the President has failed or refused to notify or consult if: the agreement fails to make progress in achieving the purposes, policies, priorities, and objectives of this proposal; the President failed to consult in accordance with the requirements of the proposal; the President has not met with the House and Senate Advisory Groups on Negotiations; or the consultation and transparency guidelines required by section 4 have not been developed. In addition, the proposal provides that trade authorities procedures shall not apply to any implementing bill for an agreement negotiated under the auspices of the WTO if the President has not issued a report setting forth a strategy to address Congressional concerns regarding WTO dispute settlement panels and the Appellate Body by December 15, 2015.

The proposal reaffirms that Congressional procedures under this Act are established as an exercise of the rulemaking power of the House of Representatives and the Senate and recognizes the constitutional right of either House to change the rules at any time, in the same manner, and to the same extent as any other rule of that House.

#### *Additional Provisions*

The proposal also addresses the applicability of trade authorities procedures to implementing bills for certain trade negotiations commenced prior to enactment of this Act, including negotiations under the auspices of the WTO, the Trans-Pacific Partnership negotiations, trade negotiations with the European Union, negotiations with respect to trade in services, and negotiations with respect to environmental goods, and establishes special notification and consultation procedures with respect to those negotiations.

The proposal also stipulates that the application of any provision of a trade agreement that is inconsistent with U.S. law shall have no effect; that no provision of a trade agreement shall prevent the United States from amending or modifying its laws; and that reports issued by dispute settlement panels convened under trade agreements shall have no binding effect under U.S. law.

Finally, the proposal expresses the sense of Congress that USTR should facilitate participation by small businesses in the trade negotiation process; that the functions of the USTR official relating to small business should be reflected in the title of that official; and that the Assistant USTR for Small Business, Market Access, and Industrial Competitiveness shall be responsible for ensuring that the interests of small businesses are considered in all trade negotiations.

#### **Effective Date**

The proposal would be effective immediately upon enactment.