

Executive Documents

DELEGATION OF FUNCTIONS

For delegation of functions of President under this section, see Ex. Ord. No. 13701, July 17, 2015, 80 F.R. 43903, set out as a note under section 4201 of this title.

§ 4205. Implementation of trade agreements**(a) In general****(1) Notification and submission**

Any agreement entered into under section 4202(b) of this title shall enter into force with respect to the United States if (and only if)—

(A) the President, at least 90 calendar days before the day on which the President enters into the trade agreement, notifies the House of Representatives and the Senate of the President's intention to enter into the agreement, and promptly thereafter publishes notice of such intention in the Federal Register;

(B) the President, at least 60 days before the day on which the President enters into the agreement, publishes the text of the agreement on a publicly available Internet website of the Office of the United States Trade Representative;

(C) within 60 days after entering into the agreement, the President submits to Congress a description of those changes to existing laws that the President considers would be required in order to bring the United States into compliance with the agreement;

(D) the President, at least 30 days before submitting to Congress the materials under subparagraph (E), submits to Congress—

(i) a draft statement of any administrative action proposed to implement the agreement; and

(ii) a copy of the final legal text of the agreement;

(E) after entering into the agreement, the President submits to Congress, on a day on which both Houses of Congress are in session, a copy of the final legal text of the agreement, together with—

(i) a draft of an implementing bill described in section 4202(b)(3) of this title;

(ii) a statement of any administrative action proposed to implement the trade agreement; and

(iii) the supporting information described in paragraph (2)(A);

(F) the implementing bill is enacted into law; and

(G) the President, not later than 30 days before the date on which the agreement enters into force with respect to a party to the agreement, submits written notice to Congress that the President has determined that the party has taken measures necessary to comply with those provisions of the agreement that are to take effect on the date on which the agreement enters into force.

(2) Supporting information**(A) In general**

The supporting information required under paragraph (1)(E)(iii) consists of—

(i) an explanation as to how the implementing bill and proposed administrative

action will change or affect existing law; and

(ii) a statement—

(I) asserting that the agreement makes progress in achieving the applicable purposes, policies, priorities, and objectives of this chapter; and

(II) setting forth the reasons of the President regarding—

(aa) how and to what extent the agreement makes progress in achieving the applicable purposes, policies, and objectives referred to in subclause (I);

(bb) whether and how the agreement changes provisions of an agreement previously negotiated;

(cc) how the agreement serves the interests of United States commerce; and

(dd) how the implementing bill meets the standards set forth in section 4202(b)(3) of this title.

(B) Public availability

The President shall make the supporting information described in subparagraph (A) available to the public.

(3) Reciprocal benefits

In order to ensure that a foreign country that is not a party to a trade agreement entered into under section 4202(b) of this title does not receive benefits under the agreement unless the country is also subject to the obligations under the agreement, the implementing bill submitted with respect to the agreement shall provide that the benefits and obligations under the agreement apply only to the parties to the agreement, if such application is consistent with the terms of the agreement. The implementing bill may also provide that the benefits and obligations under the agreement do not apply uniformly to all parties to the agreement, if such application is consistent with the terms of the agreement.

(4) Disclosure of commitments

Any agreement or other understanding with a foreign government or governments (whether oral or in writing) that—

(A) relates to a trade agreement with respect to which Congress enacts an implementing bill under trade authorities procedures; and

(B) is not disclosed to Congress before an implementing bill with respect to that agreement is introduced in either House of Congress,

shall not be considered to be part of the agreement approved by Congress and shall have no force and effect under United States law or in any dispute settlement body.

(b) Limitations on trade authorities procedures**(1) For lack of notice or consultations****(A) In general**

The trade authorities procedures shall not apply to any implementing bill submitted with respect to a trade agreement or trade agreements entered into under section

4202(b) of this title if during the 60-day period beginning on the date that one House of Congress agrees to a procedural disapproval resolution for lack of notice or consultations with respect to such trade agreement or agreements, the other House separately agrees to a procedural disapproval resolution with respect to such trade agreement or agreements.

(B) Procedural disapproval resolution

(i) For purposes of this paragraph, the term “procedural disapproval resolution” means a resolution of either House of Congress, the sole matter after the resolving clause of which is as follows: “That the President has failed or refused to notify or consult in accordance with the Bipartisan Congressional Trade Priorities and Accountability Act of 2015 on negotiations with respect to _____ and, therefore, the trade authorities procedures under that Act shall not apply to any implementing bill submitted with respect to such trade agreement or agreements.”, with the blank space being filled with a description of the trade agreement or agreements with respect to which the President is considered to have failed or refused to notify or consult.

(ii) For purposes of clause (i) and paragraphs (3)(C) and (4)(C), the President has “failed or refused to notify or consult in accordance with the Bipartisan Congressional Trade Priorities and Accountability Act of 2015” on negotiations with respect to a trade agreement or trade agreements if—

(I) the President has failed or refused to consult (as the case may be) in accordance with sections 4203 and 4204 of this title and this section with respect to the negotiations, agreement, or agreements;

(II) guidelines under section 4203 of this title have not been developed or met with respect to the negotiations, agreement, or agreements;

(III) the President has not met with the House Advisory Group on Negotiations or the Senate Advisory Group on Negotiations pursuant to a request made under section 4203(c)(4) of this title with respect to the negotiations, agreement, or agreements; or

(IV) the agreement or agreements fail to make progress in achieving the purposes, policies, priorities, and objectives of this chapter.

(2) Procedures for considering resolutions

(A) Procedural disapproval resolutions—

(i) in the House of Representatives—

(I) may be introduced by any Member of the House;

(II) shall be referred to the Committee on Ways and Means and, in addition, to the Committee on Rules; and

(III) may not be amended by either Committee; and

(ii) in the Senate—

(I) may be introduced by any Member of the Senate;

(II) shall be referred to the Committee on Finance; and

(III) may not be amended.

(B) The provisions of subsections (d) and (e) of section 2192 of this title (relating to the floor consideration of certain resolutions in the House and Senate) apply to a procedural disapproval resolution introduced with respect to a trade agreement if no other procedural disapproval resolution with respect to that trade agreement has previously been reported in that House of Congress by the Committee on Ways and Means or the Committee on Finance, as the case may be, and if no resolution described in clause (ii) of section 4204(b)(3)(B) of this title with respect to that trade agreement has been reported in that House of Congress by the Committee on Ways and Means or the Committee on Finance, as the case may be, pursuant to the procedures set forth in clauses (iii) through (vii) of such section.

(C) It is not in order for the House of Representatives to consider any procedural disapproval resolution not reported by the Committee on Ways and Means and, in addition, by the Committee on Rules.

(D) It is not in order for the Senate to consider any procedural disapproval resolution not reported by the Committee on Finance.

(3) Consideration in Senate of consultation and compliance resolution to remove trade authorities procedures

(A) Reporting of resolution

If, when the Committee on Finance of the Senate meets on whether to report an implementing bill with respect to a trade agreement or agreements entered into under section 4202(b) of this title, the committee fails to favorably report the bill, the committee shall report a resolution described in subparagraph (C).

(B) Applicability of trade authorities procedures

The trade authorities procedures shall not apply in the Senate to any implementing bill submitted with respect to a trade agreement or agreements described in subparagraph (A) if the Committee on Finance reports a resolution described in subparagraph (C) and such resolution is agreed to by the Senate.

(C) Resolution described

A resolution described in this subparagraph is a resolution of the Senate originating from the Committee on Finance the sole matter after the resolving clause of which is as follows: “That the President has failed or refused to notify or consult in accordance with the Bipartisan Congressional Trade Priorities and Accountability Act of 2015 on negotiations with respect to _____ and, therefore, the trade authorities procedures under that Act shall not apply in the Senate to any implementing bill submitted with respect to such trade agreement or agreements.”, with the blank space being filled with a description of the trade agreement or agreements described in subparagraph (A).

(D) Procedures

If the Senate does not agree to a motion to invoke cloture on the motion to proceed to a resolution described in subparagraph (C), the resolution shall be committed to the Committee on Finance.

(4) Consideration in the House of Representatives of a consultation and compliance resolution**(A) Qualifications for reporting resolution**

If—

(i) the Committee on Ways and Means of the House of Representatives reports an implementing bill with respect to a trade agreement or agreements entered into under section 4202(b) of this title with other than a favorable recommendation; and

(ii) a Member of the House of Representatives has introduced a consultation and compliance resolution on the legislative day following the filing of a report to accompany the implementing bill with other than a favorable recommendation,

then the Committee on Ways and Means shall consider a consultation and compliance resolution pursuant to subparagraph (B).

(B) Committee consideration of a qualifying resolution

(i) Not later than the fourth legislative day after the date of introduction of the resolution, the Committee on Ways and Means shall meet to consider a resolution meeting the qualifications set forth in subparagraph (A).

(ii) After consideration of one such resolution by the Committee on Ways and Means, this subparagraph shall not apply to any other such resolution.

(iii) If the Committee on Ways and Means has not reported the resolution by the sixth legislative day after the date of its introduction, that committee shall be discharged from further consideration of the resolution.

(C) Consultation and compliance resolution described

A consultation and compliance resolution—

(i) is a resolution of the House of Representatives, the sole matter after the resolving clause of which is as follows: “That the President has failed or refused to notify or consult in accordance with the Bipartisan Congressional Trade Priorities and Accountability Act of 2015 on negotiations with respect to _____ and, therefore, the trade authorities procedures under that Act shall not apply in the House of Representatives to any implementing bill submitted with respect to such trade agreement or agreements.”, with the blank space being filled with a description of the trade agreement or agreements described in subparagraph (A); and

(ii) shall be referred to the Committee on Ways and Means.

(D) Applicability of trade authorities procedures

The trade authorities procedures shall not apply in the House of Representatives to any implementing bill submitted with respect to a trade agreement or agreements which are the object of a consultation and compliance resolution if such resolution is adopted by the House.

(5) For failure to meet other requirements

Not later than December 15, 2015, the Secretary of Commerce, in consultation with the Secretary of State, the Secretary of the Treasury, the Attorney General, and the United States Trade Representative, shall transmit to Congress a report setting forth the strategy of the executive branch to address concerns of Congress regarding whether dispute settlement panels and the Appellate Body of the World Trade Organization have added to obligations, or diminished rights, of the United States, as described in section 4201(b)(16)(C) of this title. Trade authorities procedures shall not apply to any implementing bill with respect to an agreement negotiated under the auspices of the World Trade Organization unless the Secretary of Commerce has issued such report by the deadline specified in this paragraph.

(6) Limitations on procedures with respect to agreements with countries not in compliance with Trafficking Victims Protection Act of 2000**(A) In general**

The trade authorities procedures shall not apply to any implementing bill submitted with respect to a trade agreement or trade agreements entered into under section 4202(b) of this title with a country listed as a tier 3 country in the most recent annual report on trafficking in persons.

(B) Exception**(i) Invoking exception**

If the President submits to the appropriate congressional committees a letter stating that a country to which subparagraph (A) applies has taken concrete actions to implement the principal recommendations with respect to that country in the most recent annual report on trafficking in persons, the prohibition under subparagraph (A) shall not apply with respect to a trade agreement or trade agreements with that country.

(ii) Content of letter; public availability

A letter submitted under clause (i) with respect to a country shall—

(I) include a description of the concrete actions that the country has taken to implement the principal recommendations described in clause (i);

(II) be accompanied by supporting documentation providing credible evidence of each such concrete action, including copies of relevant laws or regulations adopted or modified, and any enforcement actions taken, by that country, where appropriate; and

(III) be made available to the public.

(C) Special rule for changes in certain determinations

If a country is listed as a tier 3 country in an annual report on trafficking in persons submitted in calendar year 2014 or any calendar year thereafter and, in the annual report on trafficking in persons submitted in the next calendar year, is listed on the tier 2 watch list, the President shall submit a detailed description of the credible evidence supporting the change in listing of the country, accompanied by copies of documents providing such evidence, where appropriate, to the appropriate congressional committees—

(i) in the case of a change in listing reflected in the annual report on trafficking in persons submitted in calendar year 2015, not later than 90 days after February 24, 2016; and

(ii) in the case of a change in listing reflected in an annual report on trafficking in persons submitted in calendar year 2016 or any calendar year thereafter, not later than 90 days after the submission of that report.

(D) Sense of Congress

It is the sense of Congress that the integrity of the process for making the determinations in the annual report on trafficking in persons, including determinations with respect to country rankings and the substance of the assessments in the report, should be respected and not affected by unrelated considerations.

(E) Definitions

In this paragraph:

(i) Annual report on trafficking in persons

The term “annual report on trafficking in persons” means the annual report on trafficking in persons required under section 110(b)(1) of the Trafficking Victims Protection Act of 2000 (22 U.S.C. 7107(b)(1)).

(ii) Appropriate congressional committees

The term “appropriate congressional committees” means—

(I) the Committee on Ways and Means and the Committee on Foreign Affairs of the House of Representatives; and

(II) the Committee on Finance and the Committee on Foreign Relations of the Senate.

(iii) Tier 2 watch list

The term “tier 2 watch list” means the list of countries required under section 110(b)(2)(A)(iii) of the Trafficking Victims Protection Act of 2000 (22 U.S.C. 7107(b)(2)(A)(iii)).

(iv) Tier 3 country

The term “tier 3 country” means a country on the list of countries required under section 110(b)(1)(C) of the Trafficking Victims Protection Act of 2000 (22 U.S.C. 7107(b)(1)(C)).

(c) Rules of House of Representatives and Senate

Subsection (b) of this section, section 4202(c) of this title, and section 4204(b)(3) of this title are enacted by Congress—

(1) as an exercise of the rulemaking power of the House of Representatives and the Senate, respectively, and as such are deemed a part of the rules of each House, respectively, and such procedures supersede other rules only to the extent that they are inconsistent with such other rules; and

(2) with the full recognition of the constitutional right of either House to change the rules (so far as relating to the procedures of that House) at any time, in the same manner, and to the same extent as any other rule of that House.

(Pub. L. 114–26, title I, §106, June 29, 2015, 129 Stat. 350; Pub. L. 114–125, title IX, §914(e), (f)(2), Feb. 24, 2016, 130 Stat. 274, 276.)

Editorial Notes

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a)(2)(A)(ii)(I) and (b)(1)(B)(ii)(IV), was in the original “this title”, meaning title I of Pub. L. 114–26, June 29, 2015, 129 Stat. 320, which is classified principally to this chapter. For complete classification of title I to the Code, see Short Title note set out under section 4201 of this title and Tables.

The Bipartisan Congressional Trade Priorities and Accountability Act of 2015, referred to in subsec. (b)(1)(B), (3)(C), and (4)(C)(i), is title I of Pub. L. 114–26, June 29, 2015, 129 Stat. 320, which is classified principally to this chapter. For complete classification of title I to the Code, see Short Title note set out under section 4201 of this title and Tables.

AMENDMENTS

2016—Subsec. (b)(5). Pub. L. 114–125, §914(f)(2), substituted “section 4201(b)(16)(C)” for “section 4201(b)(15)(C)”.

Subsec. (b)(6)(A). Pub. L. 114–125, §914(e)(2), substituted “listed as a tier 3 country in the most recent annual report on trafficking in persons” for “to which the minimum standards for the elimination of 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 (commonly referred to as a ‘tier 3’ country, as determined in the most recent annual report on trafficking in persons submitted under section 110(b)(1) of the Trafficking Victims Protection Act of 2000 (22 U.S.C. 7107(b)(1))”.

Subsec. (b)(6)(B) to (E). Pub. L. 114–125, §914(e)(1), added subpars. (B) to (E) and struck out former subpar. (B). Prior to amendment, text of subpar. (B) read as follows: “In this paragraph, the term ‘minimum standards for the elimination of trafficking’ means the standards set forth in section 108 of the Trafficking Victims Protection Act of 2000 (22 U.S.C. 7106).”

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2016 AMENDMENT

Amendment by Pub. L. 114–125 effective as if included in the enactment of title I of Pub. L. 114–26, see section 914(g) of Pub. L. 114–125, set out as a note under section 4201 of this title.

Executive Documents

DELEGATION OF FUNCTIONS

For delegation of functions of President under this section, see Ex. Ord. No. 13701, July 17, 2015, 80 F.R.

43903, set out as a note under section 4201 of this title, and Memorandum of President of the United States, May 24, 2016, 81 F.R. 35579, set out below.

DELEGATION OF AUTHORITY UNDER SECTION 106 OF THE BIPARTISAN CONGRESSIONAL TRADE PRIORITIES AND ACCOUNTABILITY ACT OF 2015

Memorandum of President of the United States, May 24, 2016, 81 F.R. 35579, provided:

Memorandum for the Secretary of State

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 301 of title 3, United States Code, I hereby delegate to you the functions and authorities vested in the President by section 106(b)(6)(B) and (C) of the Bipartisan Congressional Trade Priorities and Accountability Act of 2015 (Public Law 114-26, title I) (the “Act”), as added by section 914(e) of the Trade Facilitation and Trade Enforcement Act of 2015 (Public Law 114-125). In carrying out these functions, you will inform the United States Trade Representative at the earliest possible time of a decision to invoke an exception under section 106(b)(6)(B) of the Act.

In exercising authority delegated by or performing functions assigned in this memorandum, you may redelegate authority delegated by this memorandum and may further assign functions assigned by this memorandum to officers of any other department or agency within the executive branch to the extent permitted by law.

You are authorized and directed to publish this memorandum in the Federal Register.

BARACK OBAMA.

§ 4206. Treatment of certain trade agreements for which negotiations have already begun

(a) Certain agreements

Notwithstanding the prenegotiation notification and consultation requirement described in section 4204(a) of this title, if an agreement to which section 4202(b) of this title applies—

(1) is entered into under the auspices of the World Trade Organization,

(2) is entered into with the Trans-Pacific Partnership countries with respect to which notifications have been made in a manner consistent with section 4204(a)(1)(A) of this title as of June 29, 2015,

(3) is entered into with the European Union,

(4) is an agreement with respect to international trade in services entered into with WTO members with respect to which a notification has been made in a manner consistent with section 4204(a)(1)(A) of this title as of June 29, 2015, or

(5) is an agreement with respect to environmental goods entered into with WTO members with respect to which a notification has been made in a manner consistent with section 4204(a)(1)(A) of this title as of June 29, 2015,

and results from negotiations that were commenced before June 29, 2015, subsection (b) shall apply.

(b) Treatment of agreements

In the case of any agreement to which subsection (a) applies, the applicability of the trade authorities procedures to implementing bills shall be determined without regard to the requirements of section 4204(a) of this title (relating only to notice prior to initiating negotiations), and any resolution under paragraph (1)(B), (3)(C), or (4)(C) of section 4205(b) of this

title shall not be in order on the basis of a failure or refusal to comply with the provisions of section 4204(a) of this title, if (and only if) the President, as soon as feasible after June 29, 2015—

(1) notifies Congress of the negotiations described in subsection (a), the specific United States objectives in the negotiations, and whether the President is seeking a new agreement or changes to an existing agreement; and

(2) before and after submission of the notice, consults regarding the negotiations with the committees referred to in section 4204(a)(1)(B) of this title and the House and Senate Advisory Groups on Negotiations convened under section 4203(c) of this title.

(c)¹ Agreement by Asia-Pacific Economic Cooperation members to reduce rates of duty on certain environmental goods

Notwithstanding the notification requirement described in section 4202(a)(2) of this title, the President may exercise the proclamation authority provided for in section 4202(a)(1)(B) of this title to implement an agreement by members of the Asia-Pacific Economic Cooperation (APEC) to reduce any rate of duty on certain environmental goods included in Annex C of the APEC Leaders Declaration issued on September 9, 2012, if (and only if) the President, as soon as feasible after December 18, 2015, and before exercising proclamation authority under section 4202(a)(1)(B) of this title, notifies Congress of the negotiations relating to the agreement and the specific United States objectives in the negotiations.

(c)¹ Agreement by Asia-Pacific Economic Cooperation members to reduce rates of duty on certain environmental goods

Notwithstanding the notification requirement described in section 4202(a)(2) of this title, the President may exercise the proclamation authority provided for in section 4202(a)(1)(B) of this title to implement an agreement by members of the Asia-Pacific Economic Cooperation (APEC) to reduce any rate of duty on certain environmental goods included in Annex C of the APEC Leaders Declaration issued on September 9, 2012, if (and only if) the President, as soon as feasible after February 24, 2016, and before exercising proclamation authority under section 4202(a)(1)(B) of this title, notifies Congress of the negotiations relating to the agreement and the specific United States objectives in the negotiations.

(Pub. L. 114-26, title I, §107, June 29, 2015, 129 Stat. 355; Pub. L. 114-113, div. Q, title V, §502, Dec. 18, 2015, 129 Stat. 3127; Pub. L. 114-125, title IX, §916, Feb. 24, 2016, 130 Stat. 279.)

Editorial Notes

AMENDMENTS

2016—Subsec. (c). Pub. L. 114-125 added subsec. (c) relating to proclamation authority and requiring notification to Congress after Feb. 24, 2016.

2015—Subsec. (c). Pub. L. 114-113 added subsec. (c) relating to proclamation authority and requiring notification to Congress after Dec. 18, 2015.

¹ So in original. Two subsecs. (c) have been enacted.