

# CRS Report for Congress

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## Legislative Procedure for Disapproving the Renewal of China's Most-Favored-Nation Status

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### Summary

The continuation in effect of China's most-favored-nation status with the United States is contingent principally on the maintenance in force of the waiver of full compliance with the requirements of the freedom-of-emigration ("Jackson-Vanik") amendment of the Trade Act of 1974. Waivers and their underlying authority must be extended annually. Such extensions are automatic upon presidential recommendation, to be made by June 3, unless they are disapproved by a joint resolution of Congress. Such resolutions are enacted — should the Congress wish to do so — under specific procedural provisions, deemed a part of the rules of either House, and in this context superseding other rules inconsistent with them. This report describes in functional order and in detail the statutory procedure for the enactment of a joint resolution disapproving the extension of the China waiver.

### Presidential Action

A key element of China's continued most-favored-nation (MFN; nondiscriminatory) status in its trade with the United States is the maintenance in force of the presidential waiver of China's full compliance with the requirements of the freedom-of-emigration amendment ("Jackson-Vanik amendment") of the Trade Act of 1974. The waiver, first issued on October 23, 1979, under the presidential authority then in effect, has been maintained in force by annual renewals of the authority and the waiver itself.

The procedure for such renewals requires that the President determine that the extension of the overall waiver authority and China's (or any other affected country's) waiver will substantially promote the objectives of the freedom-of-emigration provision and transmit, by June 3 of every year, a report to Congress with his recommendation for the renewal of the waiver authority and specified waivers. The renewal recommendation takes effect automatically on the following July 3 and remains in force for 12 months unless it is disapproved by a joint resolution of Congress (or otherwise terminated).

## Detailed Congressional Disapproving Action

Relevant legislation provides a detailed specific procedure for the enactment of the joint resolution disapproving the recommendation to extend the waiver authority in its entirety or, more likely, with respect to a specific country (e.g., China). The procedure is set out in Section 152 of the Trade Act of 1974 (19 USC 2192) as modified by Section 153<sup>1</sup> (19 USC 2193). Under this procedure, a disapproval resolution is considered on a specific “fast track” (“expedited procedure”), providing for speedy legislative action, but containing several specific procedural provisions. Any departure from this procedure would disqualify the resolution from being so considered, and would subject it — like any other disapproving action that Congress might wish to take in lieu — to the regular legislative process for the enactment of a bill or joint resolution.

As with other rulemaking provisions in statutes, however, the procedure, despite being enacted, is considered an exercise of the rulemaking power of either House and deemed a part of its rules. Consequently, it can be changed by either House (with respect to its rules) in the same manner as any other rule. The procedure supersedes other rules only to the extent that they are inconsistent with them (Section 151(a); 19 USC 2191(a)).

The procedure for enacting a joint resolution disapproving the renewal of the waiver authority contains the following specific steps and provisions<sup>2</sup> (with some explanatory comments added) in which it differs from the regular procedure:

(1) *Introduction.* A joint resolution to disapprove the extension of the Jackson-Vanik waiver authority may be introduced by any Member at any time on or after the date the President transmits to the Congress his recommendation for the extension of his waiver authority (Section 402(d)(2)(C); 19 USC 2432(d)(2)(C)). Since the resolution is considered a “revenue” measure, it must originate in the House of Representatives. This does not mean that a disapproval resolution may not be introduced and considered in the Senate, but rather that the resolution sent to the President for approval after being passed by both Houses must be a House resolution. It, consequently, also means that disapproval action cannot take place unless a joint resolution to that effect is introduced in the House of Representatives.

(2) *Mandatory language.* The operative language of the resolution is prescribed by law and must include the date on which the President transmitted his recommendation to have his waiver authority extended and, if applicable, the country or countries which it affects (Section 153(a); 19 USC 2193(a)). If the resolution is aimed only at China, its language, after the resolving clause, must read: “That the Congress does not approve the extension of the authority contained in Section 402(c) of the Trade Act of 1974 recommended by the President on [date] with respect to the People’s Republic of China.”

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<sup>1</sup> Unless otherwise indicated, numerical reference to specific statutes is made to sections of the Trade Act of 1974.

<sup>2</sup> While care has been taken in this report to accurately describe the procedure, it is recommended that the actual language of the relevant provisions as referenced in the report also be consulted.

(3) *Referral.* The resolution is referred to the Committee on Ways and Means in the House and to the Committee on Finance in the Senate (Section 152(b); 19 USC 2192(b)).

(4) *Report or discharge.* If the committee has not reported the resolution within 30 calendar (Section 153(b)(2); 19 USC 2193(b)(2)) days, it can be discharged from further consideration of that resolution or any other resolution on the same matter. The discharge motion must be made on the second legislative day after the calendar day on which the maker of the motion has announced his intention to do so and may be made only if the committee has not yet reported a resolution with respect to the same matter (Section 152(c)(1); 19 USC 2192(c)(1)).

A motion to discharge, which may be made only by an individual favoring the resolution, is highly privileged in the House and privileged in the Senate; it is subject to limited debate (1 hour, equally divided between its supporters and opponents in the House, and between the majority leader and the minority leader, or their designees, in the Senate). The resolution may not be amended, and the vote on it may not be reconsidered (Section 152(c)(2); 19 USC 2192(c)(2)).

(5) *Initiation of consideration.* A motion to proceed to the consideration of a reported or discharged disapproval resolution is highly privileged in the House and privileged in the Senate; in either House, it may not be amended or debated, and the vote on it may not be reconsidered (Section 152(d)(1) and (e)(1); 19 USC 2192(d)(1) and (e)(1)).

(6) *Floor debate.* In either House, debate on the disapproval resolution is limited to 20 hours, equally divided between the supporters and opponents in the House, and between the majority leader and the minority leader, or their designees, in the Senate (Section 152(d)(2) or (e)(2); 19 USC 2192(d)(2) or (e)(2)); the resolution is amendable only with respect to the specific countries to which it is to apply<sup>34</sup> (Section 153(b)(3) and (4); 19 USC 2193(b)(3) and (4)); a motion further to limit debate on the resolution or on an amendment to it, or, in the Senate, also on any other debatable motion or appeal, is not debatable (Section 152(d)(2) and (e)(4), and 153(b)(3) and (4); 19 USC 2192(d)(2) and (e)(4), and 2193(b)(3) and (4)); a motion to recommit the resolution is not in order nor, in the House, a motion to reconsider the vote on the resolution (Section 152(d)(2) and (e)(4); 19 USC 2192(d)(2) and (e)(4)).

Debate on any amendment to the disapproval resolution is limited to one hour, equally divided in the House between the supporters and opponents of the amendment; in

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<sup>3</sup> Since, however, it is most likely that, as in the past, a determination with respect to China would be made on a date other than that with respect to other countries, the respective disapproval resolution would apply only to China. Hence, an amendment extending the resolution to encompass other countries would, in practice, not be possible. On the other hand, amending the resolution by striking China from it would nullify the disapproval of the renewal of China's waiver, an intent more appropriately carried out by defeating the entire resolution.

<sup>4</sup> While care has been taken in this report to accurately describe the procedure, it is recommended that the actual language of the relevant provisions as referenced in the report also be consulted.

the Senate, the one-hour limit applies to any debatable motion or appeal and is divided between the mover and the manager of the resolution (except when the manager favors the amendment, motion, or appeal, in which case the time in opposition is controlled by the minority leader or his designee). Such leaders in the Senate may allot additional time to any Senator (Section 152(e)(3) and 153(b)(3) and (4); 19 USC 2192(e)(3) and 2193(b)(3) and (4)).

In the Senate, the overall limit on debate time includes in each instance the time for debate of any debatable motion or appeal. In the House, time for debate of any other debatable motion would be limited by general rules of the House.

In the House, motions to postpone the consideration of a disapproval resolution, or to proceed to the consideration of other business, and appeals from the decisions of the Chair as to the application of the Rules of the House to the procedure relating to a disapproval resolution (which specifically govern such procedure except as provided for in Section 152(e); 19 USC 2192(e)) are not debatable (Section 152(d)(3)-(5); 19 USC 2192(d)(3)-(5)).

Once a disapproval resolution has been adopted by either House, the same House may not consider another disapproval resolution with respect to the same presidential recommendation (Section 153(c); 19 USC 2193(c)).

(7) *Special procedure for Senate consideration.* In view of the “revenue” nature of the measure, specific steps are set out for the consideration in the Senate of a disapproval resolution passed by the House of Representatives (which must be referred in the Senate to the Committee on Finance; Section 152(f)(1)(A)(i); 19 USC 2192(f)(1)(A)(i)), namely:

(a) If a Senate resolution has been introduced (but not yet passed) before the Senate receives the passed House resolution, the House resolution is placed on the Senate calendar. If the Senate and the House resolutions contain identical matter (e.g., disapproval only with respect to China), the procedure in the Senate with respect to its resolution is the same as if no resolution had been received from the House, but the vote on passage is on the House resolution (Section 152(f)(1)(A)(ii); 19 USC 2192(f)(1)(A)(ii)).

(b) If the Senate passes its own joint resolution before receiving the passed House resolution containing identical matter, the Senate resolution is held at the desk, and the House resolution, when received, is deemed to have been passed (Section 152(f)(1)(B); 19 USC 2192(f)(1)(B)).

(c) If the texts of the Senate and the House resolutions are not identical,<sup>5</sup> the Senate votes on its own resolution and, if passed, automatically substitutes its text for that of the passed House resolution, which is then returned, as amended, with a request for conference (Section 152(f)(2); 19 USC 2192(f)(2)).

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<sup>5</sup> In view of the past practice (see Footnote 3) of a separate presidential determination for China and introduction of a disapproval resolution affecting only China, it is unlikely that the House and the Senate resolutions would not be identical, and a conference would not be necessary.

(8) *Conference report.* A specific procedure is also set up for the consideration in the Senate of the conference report. The procedure limits Senate debate on the conference report (including all amendments, and debatable motions and appeals) to 10 hours, equally divided between the majority and minority leader or their designees; debate on any debatable motion or appeal is limited to one hour equally divided between the mover and the manager of the report (Section 153(d)(1); 19 USC 2193(d)(1)); debate on each amendment in disagreement is limited to 30 minutes, equally divided between the manager of the report and the minority leader or his designee, and an amendment to an amendment in disagreement must be germane (Section 153(d)(2); 19 USC 2193(d)(2)).<sup>6</sup>

(9) *Enactment.* A joint resolution of disapproval must be adopted by both Houses and transmitted to the President for his signature within 60 days from the date the previous waiver authority would have expired (i.e., by August 31) (Section 402(d)(2)(A)(i); 19 USC 2432(d)(2)(A)(i)).

(10) *Veto override.* If the President vetoes the resolution and the Congress wishes to override the veto, both Houses must vote for the override either by the August 31 deadline or within 15 days of session after the Congress receives the veto message, whichever is later (Section 402(d)(2)(A)(ii); 19 USC 2432(d)(2)(A)(ii)). The 15-day deadline for the override of the presidential veto is computed by excluding any Saturday and Sunday on which either House is not in session, and the days on which either House is in adjournment sine die or for more than 3 days to a day certain (Section 154(b); 19 USC 2194(b)).

In the Senate, consideration of any veto message, including consideration of all debatable motions and appeals, is limited to 10 hours, equally divided between the majority and the minority leaders or their designees (Section 152(f)(3); 19 USC 2192(f)(3)). House consideration of veto message is limited by its general rules.

(11) *Entry into effect.* Waiver authority as described in the disapproval resolution ceases to be effective on the 61st day after the date the joint resolution is enacted (Section 402(d)(2)(B); 19 USC 2432(d)(2)(B)), which, in turn, also terminates, as of that date, any waivers and grants of MFN status issued under that waiver authority (Section 402(c)(3); 19 USC 2432(c)(3)). A waiver can also be terminated at any time by an executive order (Section 402(c)(3); 19 USC 2432(c)(3)).

(12) If the annual extension of the waiver authority or, specifically, China's waiver, is not nullified by the enactment of a joint resolution of disapproval or the authority is not otherwise terminated or modified (e.g., by a specific measure enacted under regular procedure), the authority and the waiver (as well as China's MFN status) *remain in force* through July 2 of the following year, when they must again go through the renewal procedure.

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<sup>6</sup> In the House, general rules normally limit debate on conference reports to one hour (if the previous question is ordered). The hour is divided between majority and minority managers and, if both support the report, an opponent also receives one-third of the time.



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