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Vietnam Trade Agreement: Approval and Implementing Procedure

name redacted

Specialist in International Trade and Finance
Foreign Affairs, Defense, and Trade Division

Summary

To enter into force, the U.S. trade agreement with Vietnam must be approved by the enactment of a joint resolution of Congress, considered under a specific fast-track procedure with deadlines for its various stages, with mandatory language and no amendments. Joint resolutions S.J.Res. 16 and H.J.Res. 51 to approve the trade agreement with Vietnam were introduced, respectively, on June 11 and 12, 2001. S.J.Res.16 was reported favorably July 27, 2001 (S.Rept 107-49); H.J.Res. 51 was reported favorably September 5, 2001, (H.Rept. 107-189) and passed by the House September 6, 2001. The functional sequence of the legislative and executive steps involved in the implementation of the agreement is described in this report.

Background¹

After protracted negotiations and a one-year delay after its adoption in principle, the United States and Vietnam signed, on July 13, 2000, a comprehensive bilateral trade agreement. The key statutory purpose of the agreement is the restoration of nondiscriminatory tariff treatment² (“normal-trade-relations” (NTR), formerly “most-favored-nation” treatment) to U.S. imports from Vietnam, suspended since 1951. Hence, the agreement contains a provision reciprocally extending the NTR treatment and certain other provisions required by law for trade agreements with nonmarket economy (NME) countries. In addition, it contains comprehensive specific commitments by Vietnam in matters of market access (e.g., reduced tariff rates on imports from the United States),

¹ For detailed background information on the U.S.-Vietnam trade agreement, see CRS Report RL30416, *The Vietnam-U.S. Bilateral Trade Agreement*, by (name redacted).

² Although the internationally adopted term “most-favored-nation treatment” has been replaced, in all current and future U.S. statutes, under Section 5003 of P.L. 105-206, by the term “normal trade relations” or a similar expression, its functional equivalent—nondiscriminatory treatment—has been retained in the relevant legislation, while the term “most-favored-nation treatment” remains in universal international use.

intellectual property rights, trade in services, and investment, such as the United States already has in force as a matter of general trade policy. To enter into force, the agreement must be approved by the enactment of a joint resolution of Congress.

Restoration of NTR treatment to Vietnam as an NME country is also contingent on Vietnam's compliance with the freedom-of-emigration requirement of the Jackson-Vanik amendment (Section 402) of the Trade Act of 1974.³ In the case of Vietnam, such compliance is achieved by an annual Presidential waiver of full compliance under specified statutory conditions; such waiver may be disapproved by the enactment of a joint resolution of Congress. The President has issued such waivers for Vietnam since mid-1998, but in no instance has a disapproval resolution, if introduced, been passed by Congress, allowing the waiver to continue in force.

Implementing Procedure

The statutory requirements and legislative procedure leading to the enactment and entry into force of a trade agreement with a nonmarket economy (NME) country, including Vietnam, are set out in detail in Sections 151, 404, 405, and 407 of the Trade Act of 1974 (P.L. 93-618), as amended. Section 151 has been enacted as an exercise of the rulemaking power of either house and supersedes its other rules to the extent that they are inconsistent with it. Its provisions can be changed by either house with respect to its own procedure at any time, in the same manner and to the same extent as any other rule of that house (Section 151(a); 19 U.S.C. 2191(a)).

All alphanumerical statutory references cited in this report are to sections of the Trade Act of 1974. While care has been taken to reflect accurately the meaning of the statutes, consulting the actual language of any statute is recommended in case of any ambiguity.

Functionally, the consideration and enactment of the approval resolution and the implementation of the agreement follow a specific expedited ("fast-track") procedure explained below. Additional information, based on past practice of implementing trade agreements with NME countries in general, but applicable also to Vietnam, is provided in footnotes

(1) *Enactment necessary.*

The agreement can take effect only if approved by enactment of a joint resolution (Section 405(c)); 19 U.S.C.2435(c)).

(2) *Transmittal of the agreement by the President to Congress.*

The text of the bilateral trade agreement with Vietnam must be transmitted by the President to both houses of Congress, together with a proclamation⁴ extending nondiscriminatory treatment to Vietnam and stating his reasons for it (Section 407(a); 19

³ For detail on the Jackson-Vanik amendment, see CRS Report 98-545 E, *Jackson-Vanik Amendment: A Survey*, by (name redacted).

⁴ Although the proclamation is issued at the time of transmittal of the agreement to Congress (i.e., well in advance of the eventual enactment of the approval resolution and its implementation), its entry into force is specifically delayed to the date of the exchange of notices of acceptance of the agreement by its two parties.

U.S.C. 2437). While there is no statutory deadline for the transmittal of the proclamation and the agreement to Congress after its signing, the law requires that the transmittal take place “promptly” after the proclamation is issued.⁵

(3) *Mandatory introduction of approval resolution.*

On the day the trade agreement is transmitted to the Congress (or, if the respective house is not in session on that day, the first subsequent day on which it is in session), a joint resolution of approval (Sec. 151(b)(3); 19 U.S.C. 2191(b)(3)) must be introduced (by request) in each house by its majority leader for himself and the minority leader, or by their designees (Sec. 151(c)(2); 19 U.S.C. 2191(c)(2)).⁶

(4) *Language of approval resolution.*

The language of the resolution is prescribed by law (Sec. 151(b)(3); 19 U.S.C. 2191(b)(3)) to read, in this particular instance, after the resolving clause:

"That the Congress approves the extension of nondiscriminatory treatment with respect to the products of Vietnam transmitted by the President to the Congress on June 8, 2001".

(5) *Committee referral.*

The resolution is referred in the House to the Committee on Ways and Means and in the Senate to the Committee on Finance (Sec. 151(c)(2); 19 U.S.C. 2191(c)(2)).

(6) *Amendments prohibited.*

No amendment to the resolution, and no motion, or unanimous-consent request, to suspend the no-amendment rule, is in order in either house (Sec. 151(d); 19 U.S.C. 2191(d)).

(7) *Committee consideration in the House.*⁷

If the Ways and Means Committee has not reported the resolution within 45 days⁸ after its introduction, the Committee is automatically discharged from further consideration of the resolution, and the resolution is placed on the appropriate calendar (Sec. 151(e)(1); 19 U.S.C. 2191(e)(1)).

⁵ Trade agreement with Vietnam and other required documents were transmitted by the President to Congress on June 8, 2001. They have been published as House Document 107-85.

⁶ S.J.Res. 16 and H.J.Res. 51 to approve the trade agreement with Vietnam were introduced, respectively, on June 11 and 12, 2001.

⁷ Committee consideration in the House as described in the body of this report, differs from that in the Senate (see item (9)). This is due to the treatment, in this report, of the approval resolution as a “revenue” measure (an “implementing revenue resolution”, which it is widely presumed to be, since it would affect—adversely— customs revenues due to the significantly lower NTR tariff rates assessed on imports from Vietnam after the agreement enters into force (cf. Sec. 151(b)(2)); 19 U.S.C. 2191(b)(2); but see also footnote 11). As such, the resolution is required by the U.S. Constitution to originate in the House.. This origination provision, however, does not mean that a companion resolution may not be introduced and considered in the Senate, but only that the measure eventually passed by both houses and submitted to the President for signature, has to be a House measure.

⁸ In computing the number of days in either house, any day on which that house is not in session is excluded (Sec. 151(e)(3); 19 U.S.C. 2193(e)(3)).

(8) Floor consideration in the House.

(a) A motion to proceed to the consideration of the approval resolution is highly privileged and nondebatable; an amendment to the motion, or a motion to reconsider the vote whereby the motion is agreed or disagreed to, is not in order (Sec. 151(f)(1); 19 U.S.C. 2191(f)(1)).

(b) Debate on the resolution is limited to 20 hours⁹, divided equally between the supporters and opponents of the resolution; a motion further to limit debate is not debatable; a motion to recommit the resolution, or to reconsider the vote whereby the resolution is agreed or disagreed to, is not in order (Sec. 151(f)(2); 19 U.S.C. 2191(f)(2)).

(c) Motions to postpone the consideration of the resolution and motions to proceed to the consideration of other business are decided without debate (Sec. 151(f)(3); 19 U.S.C. 2191(f)(3)).

(d) All appeals from the decisions of the Chair relating to the application of the rules of the House of Representatives to the approval resolution are decided without debate (Sec. 151(f)(4); 19 U.S.C. 2191(f)(4)).

(e) In all other respects, consideration of the approval resolution is governed by the rules of the House of Representatives applicable to other measures in similar circumstances (Sec. 151(f)(5); 19 U.S.C. 2191(f)(5)).

(f) The vote (by simple majority) on the final passage of the approval resolution must be taken on or before the 15th day¹⁰ after the Ways and Means Committee has reported the resolution, or has been discharged from its further consideration (Sec. 151(e)(1); 19 U.S.C. 2191(e)(1)).

*(9) Committee consideration in the Senate*¹¹

An approval resolution adopted by the House of Representatives and received in the Senate is referred to the Finance Committee (Sec. 151(c)(2) and (e)(2); 19 U.S.C. 2191(c)(2) and (e)(2)).¹² If the Finance Committee has not reported the resolution within 15 days after its receipt from the House or 45 days¹³ after the introduction of its own corresponding resolution (whichever is later), the Committee is automatically discharged from further consideration of the resolution, and the resolution is placed on the appropriate calendar (Sec. 151(e)(1); 19 U.S.C. 2191(e)(1)).

(10) Floor consideration in the Senate.

(a) A motion to proceed to the consideration of the approval resolution is privileged and nondebatable; an amendment to the motion, or a motion to reconsider the vote

⁹ This statutory deadline has in past practice often been reduced by floor action.

¹⁰ Computed as in footnote 8.

¹¹ This item describes the procedure for enacting “revenue” joint resolutions approving trade agreements with nonmarket economy countries. Ambiguity in the applicable statutory language, however, has engendered a controversy as to whether they are to be considered as “revenue” or “nonrevenue” measures, which may eventually have to be resolved by a parliamentary ruling.

¹² Although a joint resolution of approval must be introduced in both houses (see item (3)), Section 151 contains no specific provisions regarding the consideration of a Senate “revenue” approval resolution (situation presumed in the procedure as described in this report). The reason for this omission appears to be in that a “revenue” measure can be enacted only as a House measure (see footnote 7).

¹³ Both computed as in footnote 8.

whereby the motion is agreed or disagreed to, is not in order (Sec. 151(g)(1); 19 U.S.C. 2191(g)(1)).

(b) Debate on the approval resolution and on all debatable motions and appeals connected with it is limited to 20 hours, equally divided between, and controlled by, the majority leader and the minority leader, or their designees (Sec. 151(g)(2); 19 U.S.C. 2191(g)(2)).

(c) Debate on any debatable motion or appeal is limited to one hour, equally divided between, and controlled by, the mover and the manager of the resolution, except that if the manager of the resolution is in favor of any such motion or appeal, the time in opposition is controlled by the minority leader or his designee; such leaders may, from time under their control on the passage of the resolution, allot additional time to any Senator during the consideration of any debatable motion or appeal (Sec. 151(g)(3); 19 U.S.C. 2191(g)(3)).

(d) A motion further to limit debate on the approval resolution is not debatable; a motion to recommit it is not in order (Sec. 151(g)(4); 19 U.S.C. 2191(g)(4)).

(e) The vote (by simple majority) on the final passage of the approval resolution must be taken on or before the 15th day¹⁴ after the Finance Committee has reported the resolution, or has been discharged from its further consideration (Sec. 151(e)(2); 19 U.S.C. 2191(e)(2)).

(f) Although, unlike in the case of the House procedure¹⁵, this is not specifically mentioned in Section 151, the Rules of the Senate govern the consideration of the approval resolution in the Senate in all aspects not specifically addressed in Section 151.

(g) If prior to the passage of its own approval resolution, the Senate receives the approval resolution already passed by the House, it continues the legislative procedure on its own resolution, but the vote on the final passage is on the House resolution.

(11) *President's implementing authority.*

(a) After the joint resolution approving the trade agreement with Vietnam is passed by both houses and signed by the President, it becomes public law, in effect, authorizing the President to put into effect the already issued proclamation¹⁶ implementing the agreement extending nondiscriminatory treatment to Vietnam (Secs. 404(a) and 405(c); 19 U.S.C. 2434(a) and 2435(c)).

(b) Application of nondiscriminatory treatment is limited to the term during which the agreement remains in force (Sec. 404(b); 19 U.S.C. 2434(b)) (see also footnote 16 and text which it accompanies).

(c) The President may at any time suspend or withdraw nondiscriminatory treatment of Vietnam (Sec. 404(c); 19 U.S.C. 2434(c)) and thereby subject all imports from that country to column 2 tariff rates (i.e., full rather than NTR rates).

(12) *Approval by Vietnam.*

The agreement also must be approved by Vietnam's National Assembly.

(13) *Entry into force.*

After the joint resolution of approval is enacted and the agreement is approved by Vietnam, the proclamation (see item (2)) becomes effective, the agreement enters into

¹⁴ Computed as in footnote 8.

¹⁵ See item (8)(e).

¹⁶ See footnote 4.

force, and nondiscriminatory treatment is extended to Vietnam on the date of exchange of written notices of acceptance of the agreement by the United States and Vietnam. A notice of the effective date of the agreement is published by the U.S. Trade Representative in the *Federal Register*.

(14) *Maintenance in force.*

According to its own terms (Article 8 of Chapter VII - General Articles), the agreement with Vietnam remains in force for a period of three years and is automatically renewable for successive three-year terms unless either party to it, at least 30 days before the expiration of the then current term, gives notice of its intent to terminate the agreement. If either party ceases to have domestic legal authority to carry out its obligations under the agreement, it may suspend the application of the agreement, or, with the agreement of the other party, any part of the agreement.¹⁷

In addition, Section 405(b)(1) (19 U.S.C. 2435(b)(1)) limits the life of trade agreements restoring nondiscriminatory treatment to NME countries to an initial term of three years. Agreements may be renewable for additional three-year terms if a satisfactory balance of trade concessions has been maintained during the life of the agreement and the President determines that actual or foreseeable U.S. reductions of trade barriers resulting from multilateral negotiations are satisfactorily reciprocated by the other country.¹⁸

¹⁷ One such circumstance would arise if Vietnam's waiver under the Jackson-Vanik amendment (see p. 1-2) were no longer in force either by the President's failure to renew it annually or through the enactment of a joint resolution disapproving its annual extension. Enactment of such resolution (H.J.Res. 55) to disapprove the extension of Vietnam's waiver, introduced on June 1, 2001 (but defeated in the House on July 26, 2001) would have prevented the extension of nondiscriminatory treatment to Vietnam or, if already in force, nullified it.

¹⁸ The latter provision reflects the fact that, by being granted nondiscriminatory treatment by the United States, an NME country would benefit from U.S. concessions extended to third countries, without itself, theoretically, having to extend any concessions specifically to the United States; it would merely have to apply to the United States the same concessions that it has granted to third countries. In the case of Vietnam, however, the bilateral agreement does provide for comprehensive U.S.-specific concessions in addition to those applicable merely on MFN basis.

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