

## **The Reorganization of U.S. Trade Agencies: A Review of the Proposal and its Prospects**

### **Introduction**

President Obama announced on January 13 his plans for the reorganization of trade agencies in the executive branch. The request contemplates a two-stage process in which he would first be given a grant of authority from Congress to propose the reorganization of agencies, subject to an expedited process of congressional approval, and would then devise and submit the detailed plans for an up-or-down vote. The somewhat sketchy proposal calls for the consolidation of the Office of the U.S. Trade Representative (USTR), much of the Department of Commerce, and four other agencies into one as-yet unnamed department. The other components would be the Small Business Administration (SBA), the Export-Import Bank (EximBank), the Overseas Private Investment Corporation (OPIC), and the U.S. Trade and Development Agency (USTDA).

The text of the president's announcement and an accompanying fact sheet are reproduced as [Appendix 1](#) to this note. Few other details are available. The administration has cast this proposed reorganization, which follows up on plans that President Obama had signaled in his [2011 State of the Union address](#), as a means of providing better services to U.S. businesses at lower cost. That is not how the proposal is seen in much of the trade policy community, however, where there is widespread concern that the already limited resources and authority of the USTR will be diminished by subsuming it within a larger institution. The concerns are amplified for those members of Congress who serve on the House and Senate trade committees, as this consolidation could reduce their committee's "turf."

This note provides context for the proposed reorganization. It does so by reviewing how the structure of U.S. agencies has evolved over generations in response to changing needs and the politics of trade; examining the current trade policy machinery and how the proposal would remake it; surveying the initial reactions to this latest initiative from legislators, analysts, and stakeholders; and summarizing the special procedures by which the Obama administration proposes to achieve this reorganization. What follows is analysis and not advocacy, and takes no view on whether the proposed reorganization is advisable. It nonetheless stresses that this proposal has some very high hurdles to clear, and that this could prove to be far too difficult to achieve in an election year. It also stresses how an initiative to fold USTR into a trade-promotion and -enforcement agency is consistent with the administration's preference for making the most of existing trade agreements over the negotiation or approval of new ones.

## The Shifting Composition of the Trade Policymaking Machinery

The announcement of this latest reorganization plan was greeted by many old hands in the U.S. trade policy community with a collective sigh of “Here we go again,” as many of them remember past efforts to downgrade the USTR or transfer its powers to other departments. One such fight came early in the Reagan administration, for example, when Secretary of Commerce Malcolm Baldrige contrived with White House support to absorb USTR into his department.<sup>1</sup> That effort failed primarily because the trade committees in Congress firmly opposed it, but was neither the first nor the last threat to USTR’s independence.

Taking a longer view, it is almost inevitable that the trade policymaking machinery in the executive branch be periodically restructured. That is a consequence of the fact that trade policy is at one and the same time an instrument of fiscal, economic, and foreign/security policy. At some risk of over-simplification, the history of trade policymaking can be reduced to three periods that are each characterized by different emphases on these priorities and shifting authority within the executive branch. The Treasury was the lead agency during the period when trade policy was principally made by Congress through periodic revisions of the tariff schedule, and the executive’s interests in this field were dominated by the fiscal implications (1789-1930). The State Department took charge after Congress made the first grants of authority for international agreements to reduce tariffs, and for the next generation trade agreements were, in large part, treated as instruments of foreign policy (1934-1961). The third and current period, in which commercial objectives are paramount, began when Congress objected to the subordination of commercial to diplomatic goals and forced the transfer of authority over negotiations from State to the predecessor agency of USTR (1962) and the transfer of authority over trade-remedy investigations from the Treasury to Commerce (1979). The Obama administration’s proposal might be seen more as the continuation of that third period than as the start of a wholly new era, albeit with new twist. The continuity comes in the sustained stress on the commercial rather than the fiscal or diplomatic aspects of trade policy, while the innovation comes in this administration’s shift in emphasis from one commercial objective (trade liberalization) to another, less ambitious pair of commercial objectives (trade enforcement and trade promotion).

These points merit some elaboration, as the evolution of the U.S. priorities and institutions anticipate and inform the politics of this latest proposal. The main phases in the development of this machinery are summarized in Box 1, and the three periods are further elaborated below. The one constant throughout the history of U.S. trade policymaking is the preeminence of Congress, with presidents being allowed to do in this field only what the legislature permits. That is as true for the process of trade policymaking as it is for its substance. The reorganization plans that actually “stick” are the ones that either emerged as congressional initiatives or that were proposed by presidents who had the luxury of large party majorities in Congress; others, like the aforementioned episode in the Reagan administration, could not overcome the entrenched opposition of the congressional trade committees.

The fiscal function is the oldest attribute of trade policy and is now the least relevant. While the tariff was the principal source of revenue for the Federal government in the years before establishment of the income tax (made possible by the XVI Amendment to the Constitution in 1913) and the negotiated reduction in tariff rates (since 1934), in Fiscal Year 2012 import taxes are estimated to provide just 1.3% of [Federal revenue](#). The diminishing fiscal

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<sup>1</sup> For an account of this and other episodes in the institutional life of the USTR see [Chapter 5](#) of I. M. Destler, *American Trade Politics* 4<sup>th</sup> edition (Washington, D.C.: Peterson Institute for International Economics, 2005).

**Box 1: The Development of U.S. Trade Policymaking and Coordinating Agencies**

- 1789 The executive branch of government is organized, with the [Treasury](#) collecting tariffs and the [Department of State](#) having (in theory if not in practice) the power to negotiate trade treaties.
- 1903 The U.S. Department of Commerce and Labor is created.
- 1913 The agency is split into a Department of Commerce and a Department of Labor.
- 1916 In the culmination of a decades-long reform movement to “get politics out of the tariff,” the Tariff Commission is created by [law](#) to advise both branches on revisions to the tariff schedule.
- 1934 In a predecessor to the “fast track,” Congress approves a [Reciprocal Trade Agreements Act](#) (RTAA) that authorizes implementation of tariff-reduction agreements by executive order. The State Department leads the bilateral (1934-1946) and multilateral (1947-1961) negotiations.  
The [Export-Import Bank](#) (EximBank) is created by [executive order](#).
- 1946 The [Employment Act](#) creates the [Council of Economic Advisors](#) as an advisory body in the Executive Office of the President.
- 1953 Building upon the Reconstruction Finance Corporation (created in 1932) and other predecessors, the [Small Business Act](#) authorizes creation of the independent [Small Business Administration](#).
- 1962 A provision in the Trade Expansion Act of 1962 (the last RTAA grant) authorizes the creation of a Trade Representative, and thus the transfer of primary authority over trade negotiations from the State Department. Another [provision](#) creates an inter-agency trade organization. The Special Representative for Trade Negotiations (STR) is created by [executive order](#) the next year.
- 1969 The [Foreign Assistance Act](#) authorizes creation of the [Overseas Private Investment Corporation](#) as an agency under the guidance of the Secretary of State. This is done by [executive order](#) in 1971.
- 1974 A [provision](#) in the Trade Act of 1974 renames the former Tariff Commission as the U.S. International Trade Commission and redefines its functions.
- 1979 In a [reorganization plan](#) and a later (1980) [executive order](#) the STR is renamed the Office of the U.S. Trade Representative (USTR), removing the taint of impermanence that was implied by its original title. The functions of this body and the inter-agency trade organization are also redefined.  
The same reorganization defines the responsibilities of the Commerce Department, and moves there (from Treasury) the power to conduct antidumping and countervailing duty investigations.
- 1980 Building upon initiatives dating back to the Marshall Plan, the Trade and Development Program (TDP) is created as part of the International Development Cooperation Agency.
- 1985 The [U.S.-Israel Free Trade Agreement](#) is the first in a series of bilateral trade agreements negotiated at least as much for reasons of diplomacy as for commercial policy, thus marking the USTR’s partial return into the orbit of the foreign policy establishment.
- 1992 The [Jobs Through Exports Act](#) recasts the TDP as the [U.S. Trade and Development Agency](#) (USTDA), an independent agency under the foreign policy guidance of the Secretary of State.
- 1993 Following the model of the National Security Council, the [National Economic Council](#) is established by [executive order](#) as a Cabinet-level coordinating body on economic policy.
- 2002 The [Homeland Security Act](#) creates the Department of Homeland Security (DHS), integrating all or part of 22 different bodies to establish “one face at the border.” DHS is reorganized several times in 2005-2009. It includes three agencies with trade-related responsibilities: [U.S. Customs and Border Protection](#) and the [U.S. Coast Guard](#) (which had been in the Treasury since 1789 and 1790, respectively), and [U.S. Immigration and Customs Enforcement](#) (the Immigration and Naturalization Service had been in the Department of Justice; ICE also took over some responsibilities of the Agriculture Department’s Animal and Plant Health Inspection Service).

relevance of trade policy has meant a concurrent decline in the interest and powers of the Treasury, a process that was only accelerated by its loss of trade-remedy authority in 1979. This anachronism is nevertheless still reflected in the congressional division of labor. The tax committees in Congress remain the principal committees of jurisdiction for trade policy, on the theory that trade is about tariffs and tariffs are taxes. The [Ways and Means Committee](#) in the House of Representatives and the [Finance Committee](#) in the Senate have been the gate-keepers of U.S. trade policy since their creation in 1802 and 1816, respectively. They jealously guard this power, raising strong objections to proposals that would abolish or demote the USTR.

The second period in trade policymaking was marked by the use of trade as an instrument of foreign policy. While the State Department was also guided by commercial interests in the agreements that it negotiated between 1934 and 1961, it employed trade policy to reward allies and (less often) to punish adversaries. That practice was not popular in Congress, where one often heard the complaint that trade was being treated as “the handmaiden of foreign policy.” These concerns came to a head in the negotiations with the Kennedy administration over the Trade Expansion Act of 1962, an omnibus bill that granted authority for what became the Kennedy Round of multilateral trade negotiations. Part of the price that Congress obliged the administration to pay for this grant was the transfer of authority for trade negotiations from State to the new Special Representative for Trade Negotiations (STR). The implied impermanence of a “special” office was removed in a later trade law, when it was recast as the USTR by the Trade Agreements Act of 1979. The creation of STR/USTR marked the start of the third period in which the commercial functions of trade policy are stressed over the fiscal and foreign policy aspects.

This institutional reform did not eliminate the ties between trade policy and foreign policy, and the Bush administration took two important steps to reforge those links after 9/11. One was the creation of the Department of Homeland Security (DHS) and the transfer of the former Customs Service (now U.S. Customs and Border Protection) and other agencies to this new department. That shift marked the definitive end of the period when the principal function of customs officials was to collect revenue, and underlined the newfound importance of keeping the “nuke in the box” and other threats from entering U.S. territory. The other step was the negotiation of several free trade agreements (FTAs) with countries that figured more prominently in foreign policy than they did in trade, especially partners that were aligned with U.S. policy in the Middle East (i.e., moderate Arab states and countries in Asia and Latin America that joined the Coalition of the Willing in Iraq). These renewed links between trade policy and foreign policy were significant, but did not wholly reverse the congressionally mandated emphasis upon commercial over diplomatic/security objectives.

Aside from that exceptional period, every administration from Kennedy through Obama has treated trade policy more as a tool of economic policy than as an instrument of foreign policy. There have been some significant variations within that overall theme, both with regard to the relative mix between these two areas of public policy and in the preferred types of commercial policy. One important change in the Obama administration has been a shift away from trade liberalization (i.e., negotiations for *new* agreements resulting in the mutual reduction of trade barriers) to trade promotion, and more specifically export promotion (i.e., initiatives aimed at fuller enforcement and exploitation of *existing* trade agreements). That change was quite evident in President Obama’s [2010 State of the Union address](#), in which he announced the [National Export Initiative](#) goal of “doubl[ing] our exports over the next five years.” The current reorganization proposal is entirely consistent with that emphasis on trade promotion over trade liberalization, as the negotiations-oriented bureaus in the proposed new department would

comprise a small fraction of the institution's total resources. The Obama administration has also placed greater emphasis on trade enforcement, a goal that — like trade promotion — is more about taking full advantage of inherited trade agreements than devoting political capital to the negotiation of new ones. That shift towards trade enforcement was first signaled by the trade reorganization proposal, then soon followed by the emphases in the president's 2012 State of the Union message and the new resources targeted to this function in his budget proposal for Fiscal Year 2013.

### The Shape of the Reformed Trade Policy Machinery

Just what would this as-yet unnamed<sup>2</sup> new department look like, and where would it fit within the overall trade policymaking machinery of the executive branch? Two points deserve stress. The first is that the new department would not bring together every trade-related agency of government, instead consolidating most (but not all) of those agencies that are directly responsible for the negotiation and promotion of agreements, as well as some aspects of their enforcement. Much of the administration and enforcement of trade laws, especially customs and inspection functions, would continue to be exercised by DHS and other agencies. Similarly, the U.S. International Trade Commission (USITC) — which has both advisory and administrative responsibilities<sup>3</sup> — would continue to remain an independent agency. The second point is that, as noted above, the former USTR would form a small part of the new department.

The data in Table 1, which are based on the Obama administration's Fiscal Year 2012 budget proposal, break down the current personnel and budget of the trade-related agencies. The trade policymaking machinery of the executive branch plus the USITC and other trade-related commissions collectively employ over 100,000 people and have a combined budget of just under \$24 billion. About one-tenth of these resources are now wielded by the agencies that would be consolidated into the new department. Its total size might actually be smaller than the current Department of Commerce, taking into account that the administration proposes to transfer the National Oceanic and Atmospheric Administration (NOAA) to the Interior Department. NOAA is responsible for more than half of Commerce's budget. It is not entirely clear where some of the other entities now housed under the Commerce roof would be sent, nor how many other, smaller offices in still more government departments might be moved to this new entity.<sup>4</sup>

The single largest function of the new department, at least as measured by its people and its dollars, would be in the collection and analysis of statistics. Although this point was not formally stated in the fact sheet, administration officials clarified in a [press conference](#) that the Bureau of the Census would remain a part of the new government agency. It would form part of a new

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<sup>2</sup> In answer to a January 13 [question from the press](#), Deputy Director for Management Jeff Zients of the Office of Management and Budget said only that the name “will be worked out through the process of submitting the specific proposal to Congress once we get the consolidation authority.”

<sup>3</sup> The chief authorities of the USITC are (1) to apply the “injury tests” in antidumping and countervailing duty laws; (2) to conduct investigations and (when required) recommend remedies in safeguard cases; (3) to administer the section 337 intellectual property law; (4) to serve as the custodian of the Harmonized Tariff Schedule of the United States; and (5) to conduct advisory investigations for the executive and legislative branches on a variety of issues.

<sup>4</sup> Other agencies beyond these initial six might also be folded into the new department. According to a [report](#) on FederalTimes.com, for example, it might also include the Department Agriculture's Rural Business and Cooperative Service, the Treasury Department's Community Financial Development Institutions Fund, and the National Science Foundation's National Center for Science and Engineering Statistics.

**Table 1: Resources of Trade-Related Agencies in the Executive Branch***Based on the Obama Administration's Fiscal Year 2012 Budget Proposal*

	Personnel (FTEs)		Budget Auth. (\$Mns.)	
	Total	Share	Total	Share
<b><i>Proposed for Consolidation*</i></b>	<b>11,869</b>	<b>10.9</b>	<b>2,093</b>	<b>8.8</b>
Small Business Administration	3,202	2.9	427	1.8
Department of Labor: Bureau of Labor Statistics	2,456	2.2	578	2.4
DOC: Bureau of the Census	2,285	2.1	302	1.3
DOC: International Trade Administration	1,960	1.8	517	2.2
DOC: Bureau of Economic Analysis & related	565	0.5	113	0.5
Export-Import Bank	470	0.4	4	<0.1
DOC: Bureau of Industry and Security**	393	0.4	111	0.5
Office of the U.S. Trade Representative	248	0.2	51	0.2
Overseas Private Investment Corporation	240	0.2	-66	—
U.S. Trade and Development Agency	50	<0.1	56	0.2
<b><i>Other Trade-Related Agencies</i></b>				
<b><i>Administration, Inspection, and Enforcement</i></b>	<b>94,666</b>	<b>86.2</b>	<b>19,511</b>	<b>81.4</b>
DHS: U.S. Customs and Border Protection	51,590	47.0	10,159	42.4
DHS: U.S. Immigration and Customs Enforcement	20,581	18.8	5,808	24.2
USDA: Food Safety and Inspection Service	9,625	8.8	1,011	4.2
USDA: Animal and Plant Health Inspection Service	6,404	5.8	1,080	4.5
Dept. of Justice: Bur. of Alcohol, Tob. Firearms & Explos.	5,211	4.7	1,147	4.8
Treasury: Bureau of Alcohol and Tobacco Tax and Trade	502	0.5	98	0.4
Department of Transportation: Maritime Administration	491	0.4	161	0.7
Federal Maritime Commission***	133	0.1	26	0.1
Federal Communications Commission: Int'l Bureau****	129	0.1	21	0.1
<b><i>Research, Statistical, and Advisory Bodies</i></b>	<b>1,943</b>	<b>1.8</b>	<b>342</b>	<b>1.4</b>
USDA: National Agricultural Statistics Service	1,104	1.0	165	0.7
U.S. International Trade Commission***	405	0.4	87	0.4
USDA: Economic Research Service	405	0.4	86	0.4
Council of Economic Advisors	29	<0.1	4	<0.1
<b><i>Other Trade-Related Bureaus and Programs****</i></b>	<b>1,268</b>	<b>1.2</b>	<b>2,014</b>	<b>8.4</b>
USDA: Foreign Agricultural Service	819	0.7	231	1.0
Treasury: International Affairs and Economic Policy	275	0.3	68	0.3
Department of Labor: Trade Adjustment Assistance	174	0.2	1,100	4.6
USDA: Commodity Credit Corp. export programs	NA	NA	615	2.6
<b>Total</b>	<b>109,746</b>	<b>100.0</b>	<b>23,960</b>	<b>100.0</b>

\* : This listing is partly speculative due to the limited available information on the proposal, especially with respect to those agencies not explicitly named in the administration's fact sheet.

\*\* : It is not clear from the proposal whether BIS would be made a part of the new agency. One rumor suggests that it would be brought within the Executive Office of the President.

\*\*\* : Note that these commissions are not a part of the executive branch but are included here because some of the functions that they perform are complementary to those of the executive.

\*\*\*\* : Separate data are not available for the State Department's Bureau of Economic and Business Affairs.

Budget data are based on net budget authority.

DHS = Department of Homeland Security

DOC = Department of Commerce

FTE = Full-Time Equivalent (i.e., person-years)

USDA = U.S. Department of Agriculture

NA = Separate data are not available for the institution in question.

Source: Calculated from Office of Management and Budget data at <http://www.whitehouse.gov/omb/budget/Overview/>, supplemented by information from some agencies' individual budget requests.

statistical office that would also pull in functions now performed in other government agencies such as the Bureau of Labor Statistics (BLS). Currently part of the Department of Labor, BLS reports on (among many other things) the prices of imported goods. The statistical agencies shown in the table currently employ 5,306 persons and have a combined budget of \$993 million, representing 44.7% and 47.4%, respectively, of the combined total for those agencies that are slated for consolidation. (One may nonetheless assume that this is one area where economies of scale might be most easily achieved, and hence their share of departmental resources may be somewhat smaller.) The trade-promotion functions now performed by the SBA, EximBank, OPIC, and USTDA account for another 33.4% of the personnel currently employed in the agencies that would form the new department.<sup>5</sup> This means that two agencies that are today most closely involved in trade policymaking as we usually think of it, namely the USTR and Commerce's International Trade Administration, account for just 22.2% of the combined personnel and 27.1% of the budget. Taken on its own, the USTR's share is smaller still (i.e., 2.1% and 2.4%).

If the USTR thus becomes a smaller fish in a larger pond, the new pond in which it is to swim will still occupy little territory in the trade policy landscape. The data in Table 1 also reveal that the other agencies tasked with various trade-related administrative, inspection, and enforcement responsibilities control the great bulk of the resources in the U.S. trade policy machinery. That is most especially evident in the case of U.S. Customs and Border Protection and U.S. Immigration and Customs Enforcement, both of which were made part of DHS when that department was created in 2002. Taken together they have over 72,000 employees, collectively accounting for two-thirds of the executive branch's total trade policy workforce. To put the magnitude of these numbers in perspective, the personnel in CBP and ICE are equivalent to roughly four divisions of infantry in the U.S. Army. That analogy is apt, considering the fact that DHS places a higher emphasis on terrorism than on tariffs. Many thousands of additional inspectors are employed by the agencies that enforce the U.S. sanitary and phytosanitary laws, the regulations affecting alcohol and tobacco, etc. The table also shows that there are several other agencies involved in the analysis or promotion of trade that would apparently remain outside of the new department.

## Reactions to the Proposal

The initial reactions to the administration's reorganization proposal may be easily summarized: Apart from a few people outside the trade policy community *per se* who favor steps to make government more efficient and user-friendly (e.g., in several newspaper editorial pages), as well as an even smaller number of specialists who favor the idea for one reason or another, it has encountered an unusually high level of skepticism or even outright hostility. These doubts and objections are based on three distinct sets of concerns. One is that folding the various functions that are now performed by separate agencies into one body will lead to a downgrading of the emphasis placed on those policy objectives; that is a concern that one hears not just from the trade policy community, where the perceived slight to the USTR is worrisome, but also from advocates of other causes (e.g., small business and the environment) who fear that their institutional champions will become smaller players in a larger, less focused team. Another and perhaps more decisive objection is the related matter of turf: The committees in Congress that

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<sup>5</sup> These agencies' share of the current budget is difficult to calculate, due to the problems of accounting for loans and loan guarantees.

now have jurisdiction over the USTR fear losing control of this agency. Third, it is impossible to abstract this or almost any issue from the fact that we are now in a presidential election year, and the chances for approving any significant initiative will be affected by its perceived impact on public opinion and the reelection or replacement of the incumbent. That consideration may make the present proposal less attractive to Republicans than it might be if considered on its own merits, though it could have just the opposite effect on some Democrats.

Many members of the trade community see the proposed consolidation as a threat to the standing of the USTR and the priority that is accorded to trade liberalization. That is a concern that one reporter recognized from the moment that the administration floated the proposal, asking if there were “any danger that by taking [USTR] and merging it into something else, you sort of make the trade agenda and the importance of reaching further trade deals or maybe even a global trade deal, you end up taking that position and appearing to diminish its importance?” OMB Deputy Director Zients [answered](#) that, “The U.S. Trade Representative will maintain his Cabinet status, and this will strengthen our trade enforcement, our trade promotion, our export promotion, our financing for exports by integrating them into one department. So this strengthens our trade position.”

That response did not satisfy the critics. Among the trade groups that expressed skepticism or opposition to the proposal, either by issuing formal statements to that effect or by making negative comments to the press, are the [American Frozen Food Institute](#), the [American Soybean Association](#), the [Emergency Committee for American Trade](#), the [National Cattlemen’s Beef Association](#), the [National Foreign Trade Council and Coalition for Employment through Exports](#), the [U.S. Chamber of Commerce](#), and the [U.S. Dairy Export Council and the National Milk Producers Federation](#). These objections solidified in a January 24 letter in which more than 80 business and industry organizations stated their objections to the plan. The full text of that letter is reproduced in Box 2.

The proposal immediately sparked opposition from the bipartisan leadership of the congressional trade committees. Just hours after the administration released its proposal, Chairman Dave Camp (Republican-Michigan) of the House Ways and Means Committee and Chairman Max Baucus (Democrat-Montana) of the Senate Finance Committee issued a [joint statement](#) declaring that —

Everyone agrees we must do more to ensure that our government runs efficiently and makes the best use of taxpayer dollars. While we welcome the ability to reduce duplication and streamline government services, we are concerned about the impact that the President’s proposal could have on the ability of the United States to aggressively open new markets to American-made goods and services and create U.S. jobs. Creating jobs must remain our number one priority, and a smart, aggressive trade policy that promotes our world-class agricultural and manufactured goods and services is critical to accomplishing that goal. The Office of the U.S. Trade Representative is nimble, lean and effective – and time and again it delivers on its mission and creates jobs here at home. Taking USTR, one of the most efficient agencies that is a model of how government can and should work, and making it just another corner of a new bureaucratic behemoth would hurt American exports and hinder American job creation. We certainly need to look for ways to reduce government and cut taxes, but not at the expense of programs that are helping businesses, ranchers and farmers create jobs and expand our economy.

**Box 2: Text of a January 24 Letter to President Obama from Business Organizations**

On behalf of U.S. small, medium and large enterprises representing a wide segment of the business and agricultural communities engaged in international trade and investment, we are writing to express deep concerns over your Administration's proposal to merge the Office of the U.S. Trade Representative with five other agencies responsible for business and trade into one single cabinet-level department. While not collectively taking a position on your request for reorganization authority, our organizations strongly value the goals of creating more efficient and better-functioning government agencies that will better advance U.S. competitiveness in the international economy.

At the outset, we would like to underscore the critical importance of U.S. international trade and economic engagement. The United States is the world's largest trading nation and has enjoyed enormous prosperity in large part because of the policies on trade and investment liberalization it adopted in 1934 and thereafter, which is the mission of the United States Trade Representative (USTR) to pursue. Over the last decade, U.S. trade in agricultural, consumer and manufactured goods and services has accounted for an increasing share of U.S. economic growth and has contributed significantly to the high standard of living enjoyed by American workers and their families, in no small part due to the trade and market-opening agreements USTR has negotiated. With 95 percent of the world's population and about 80 percent of the world's purchasing power outside U.S. borders, trade and investment are vital to grow America's industries, jobs and economy. The U.S. government's role in international trade policy, negotiations, enforcement and promotion is highly important and raises very complex issues on which a broad range of stakeholders within government and outside has strong interests.

While we are still assessing the breadth and potential impact of the proposal, we would like to share our immediate concerns about one aspect of the trade-agency reorganization proposal: the apparent elimination of the Office of the United States Trade Representative (USTR) as a separate entity under the Executive Office of the President. This extremely efficient, focused and effective entity was first created in 1962, at the request of Congress, and then expanded in 1974 when Congress officially created USTR, where it negotiates, enforces and administers the U.S. trade agreements program and is directly accountable to both the President and Congress. USTR also plays an invaluable role in coordinating the many different entities within the U.S. government that have specialized trade functions based on their own expertise. This role in balancing the interests of various constituencies and agencies helps provide assurance to all stakeholders that no one has a thumb on the scale, or that important commercial interests will be traded for other unrelated policy objectives, including foreign policy.

Congress and the business and agricultural communities have often noted the importance of having USTR as a separate entity within the Office of the President, so that it can act responsively to negotiate, implement and enforce U.S. trade objectives. For the U.S. agricultural and business communities, USTR has played a highly important role that has grown U.S. exports, eliminated foreign market barriers and improved the overall competitiveness of U.S. farm and manufactured goods and services in the international economy.

USTR's unique and important role stems in substantial part from its position within the Executive Office of the President, lending it credibility with foreign trading partners, Congress, other U.S. government entities and private stakeholders. Most developed economies have a direct counterpart to the USTR that reports to the head of government which lends the position enormous credibility. Subsuming USTR into a broader trade and business government department will severely harm that credibility and USTR's ability to play its unique coordinating role within the U.S. government. As a result, we believe that such a move will weaken the ability of USTR and the United States to pursue effectively a strong trade policy that is responsive to Congress, business and other stakeholders and meets our country's important objectives, including achieving the Administration's important goal of doubling exports.

We welcome your and your Administration's objective to improve how the government works with business and promotes U.S. international economic engagement, but we have immediate concerns about fundamental aspects of the trade-agency reorganization proposal. We look forward to consulting with you and Congress on any further steps that may be considered related to this proposal to ensure that any changes made will advance economic opportunities and growth for American enterprises and our workers.

Those concerns may be even more poignant for the members of the Senate Finance Committee than they are for members of the House Ways and Means Committee. The Senate is uniquely responsible for confirming high-level nominees such as department secretaries and ambassadors, and if the USTR were to be incorporated into a new department that power would likely be transferred from the Finance Committee to the Commerce Committee.

Nor are trade-related sectors and their allies in Congress alone in expressing concerns over the perceived loss of prestige and independence that comes from consolidation. While advocates of small business welcome the elevation of the SBA to Cabinet status (something that President Obama can achieve entirely on his own authority), they are also concerned over the implications of folding it into a larger entity. “[S]uch a reorganization could minimize the emphasis placed on small business by the federal government and lead to an even greater imbalance toward promoting the interests of large businesses over those of small business,” according to a National Small Business Association [statement](#). The proposal also encountered doubts or even hostility from the [Small Business Majority](#) and the [American Small Business League](#), though the [National Association of Development Companies](#) took a more positive view. Similarly, the proposal to move the National Oceanic and Atmospheric Administration (NOAA) out of the Commerce Department and into the Department of the Interior has prompted opposition from environmental organizations. According to the [Natural Resources Defense Council](#), this move could endanger “the scientific and environmental strengths of NOAA, and the independent perspectives it brings to critical issues.”

One of the rare exceptions to the general rule of opposition is [Clyde Prestowitz](#), a former Department of Commerce official from the Reagan administration who [wrote](#) in a *Foreign Policy* blog that “the idea is good and should be adopted.” That comes as no surprise, as Prestowitz was in charge of the failed efforts to accomplish much the same end a generation ago. This latest proposal allowed him an opportunity to relive that old fight, arguing that —

Yes, USTR is small and nimble, but it also has no data gathering or analytical capability. Consequently, it is nimble but poorly informed, dependent on corporations who are interested parties for its data, and without clout in the inter-agency maneuvering in Washington. This explains why it has such a poor record of negotiating deals that actually promote U.S. exports or that reduce U.S. trade deficits.

Prestowitz nonetheless concluded that the “proposal is not going anywhere,” and that the sole reason that the administration made it is part of a broader policy of “throwing up proposals made previously by Republican administrations but opposed by present Republican members of [Congress] just to show how obstructionist and reactionary the Republicans have become.”

[David Rothkopf](#), a former Deputy Under Secretary of Commerce for International Trade Policy, shares Prestowitz’s support for the plan. He posted [his argument](#) for it on the *Foreign Policy* website, which also hosted a more skeptical [post](#) from [Philip Levy](#) on the subject. The proposal won a somewhat surprising but cautious [endorsement](#) from [Alison Acosta Fraser](#) of the Heritage Foundation.

The proposal further picked up the backing of Representative [Charles Rangel](#) (Democrat-New York), the former Chairman of the House Ways and Means Committee, as well as House Minority Leader [Nancy Pelosi](#) (Democrat-California). Both of them stressed the perceived benefits for small businesses. It is nonetheless worth noting that neither Rangel nor Pelosi have made trade liberalization *per se* a political priority in their careers, and each of them have

recently suffered serious reductions in political clout. Rangel lost his chairmanship as a result of a tax scandal, and Pelosi was demoted from Speaker of the House when Democrats lost their majority in the 2010 election.

### The Fast-Track Approval Process for Government Reorganization

One other aspect of this proposal that merits attention is the special but not unprecedented procedure by which Congress would be asked to approve it. President Obama requested that Congress renew an authority that had been in place, with some variations, throughout the middle of the 20<sup>th</sup> century. Known as a “fast-track” authority, but not to be confused with a trade policymaking instrument that goes by the same name, these rules provide for an expedited process by which the president proposes reorganizations and Congress has a strict deadline to either approve or reject the plan. The most recent version of this law, which expired at the end of 1984, is reproduced as [Appendix 2](#) to this note.

The Reorganization Act of 1977 (Public Law 95-17), as amended and extended, was codified as Chapter 9, Title 5 of the U.S. Code. It had antecedents reaching back several decades. Under the Reorganization Act of 1939, for example, which operated on the basis of presidential plans that were subject to legislative vetoes (i.e., either chamber of Congress could block a plan by enacting a resolution against it), the Roosevelt administration created the modern Executive Office of the President. Government reorganization plans submitted under these and related states were carried out by every president through Reagan (except for the brief tenure of President Ford). According to a recent [Congressional Research Service report](#), these presidents issued more than 100 reorganization plans. Most of these were relatively minor, but some — like President Carter’s transfer of trade-remedy authority from the Treasury to Commerce — were quite significant.

The terms of the authority were tweaked in order to comply with the Supreme Court’s 1983 ruling in [INS v. Chadha](#). That case established that legislative vetoes are an unconstitutional departure from the ordinary legislative process, but the obstacle is easily overcome by requiring that the results of a congressional up-or-down vote be presented to the president for a final decision. That approach, which more closely mimics the legislative process set out in the Constitution, is precisely what Congress provided for in the [Reorganization Act Amendments of 1984](#). That remedial legislation, which extended the reorganization authority through the end of 1984, also provided a three-step process by which (1) the president submitted a reorganization plan, (2) Congress could approve or reject this via a joint resolution that was subject to expedited procedures, (3) the joint resolution (if approved) also had to be presented to the president for his signature. The expedited procedures provided for in these amendments, as reproduced in [Appendix 2](#) of this note, will be familiar to many experts in U.S. trade law insofar as they bear a very close resemblance to the fast-track procedures for the approval of the implementing bills of trade agreements. This is presumably the pattern that would be followed in the proposed new grant of authority to the Obama administration.

In addition to the substantive objections that have been raised to the reorganization plan, as summarized in the preceding section, there are two additional reasons why Congress may decline to grant the Obama administration’s request. One is that the legislative branch has grown increasingly reluctant to extend a power that aggrandizes the executive at its own expense. That was most recently demonstrated when Congress rejected a similar request made by President George W. Bush early in his tenure. Despite the fact that Congress was then controlled by his

own party, Bush was obliged to pursue his plans for government reorganization — including the very significant step of creating DHS — through the ordinary legislative process.

The second reason why Congress may be even more reluctant in the present case is that, for precisely the same reasons that Prestowitz cited, this latest request may be perceived to be an election-year stunt. President Obama is running for reelection on a Trumanesque platform of blaming a “do-nothing Congress” for the impasse in Washington. In that context, the latest proposal is something of a win-win for the White House: Either Congress does as the president asks and he can take credit for reducing waste and inefficiency, or it denies his request and he can point to one more reform that his partisan adversaries have stymied. As things now stand, it seems much more likely that he will be obliged to revert to the latter option.

There is another possibility that does not appear to have been publicly suggested by anyone in Congress, but that might nonetheless emerge in the coming months. One could well imagine a pro-trade legislator taking the position that Congress might grant one form of fast-track authority to the president if it is tied to the other. Republicans have grown increasingly irritated with the Obama administration’s apparent disinterest in winning a new grant of fast-track negotiating authority or, as it has been known since 2001, trade promotion authority (TPA). TPA provides a process that closely resembles the one laid out in the Reorganization Act, with the main difference being that the purpose is to approve the implementing legislation for a trade agreement rather than a reorganization plan. Many of the deadlines and other special rules for these two forms of expedited legislative process are similar or identical. The last such grant of TPA ran out in mid-2007, and the administration will need a new one if it is ever to complete the current TransPacific Partnership negotiations or help to revive the flagging Doha Round. Reorganization of the trade agencies without a complementary request for a new grant of TPA may be seen as further evidence of the low priority that the administration attaches to trade liberalization. If the two forms of fast track were to advance in tandem, however, the administration might be better able to back up its assertion that reorganization will strengthen the hands of U.S. trade negotiators.

That possibility remains purely speculative, and if someone in Congress were to make such a proposal it might only add another layer of complexity to the initiative. This is nonetheless a possibility worth looking out for in the coming months, especially if serious efforts are made to move the reorganization plan beyond the phase of blue skies and press conferences.

## Appendix 1: The Obama Administration's Proposal

*Two Items Posted on January 13, 2012*

### *Press Release:*

WASHINGTON, DC – As a follow up to last year's State of the Union, today, President Obama called on Congress to reinstate Presidential authority to reorganize and consolidate the federal government, which will ensure swift action on his proposals to streamline government to make it work better for the American people while eliminating duplication, waste and inefficiencies.

“We live in a 21st century economy, but we've still got a government organized for the 20th century. Our economy has fundamentally changed – as has the world – but the government has not. The needs of our citizens have fundamentally changed but their government has not. Instead, it has often grown more complex. Today, I am calling on Congress to reinstate the authority that past presidents have had to streamline and reform the Executive Branch. This is the same sort of authority that every business owner has to make sure that his or her company keeps pace with the times. And let me be clear: I will only use this authority for reforms that result in more efficiency, better service, and a leaner government,” said President Obama.

Almost every President from Herbert Hoover to Ronald Reagan had reorganization authority. Too often past attempts to streamline government got caught up in beltway politics and power struggles that prevented meaningful consolidation. And more often than not, new agencies were added without taking any away.

Unlike the authority granted in the past, the President's proposal would initiate new accountability by mandating that any plan must reduce the number of government agencies or save taxpayer dollars. It would also ensure expedient review by Congress.

The President laid out his first proposed use of that authority consolidating six agencies into one more efficient agency to promote competitiveness, exports and American business. Currently, there are six major departments and agencies that focus primarily on business and trade in the federal government. The six are: U.S. Department of Commerce's core business and trade functions, the Small Business Administration, the Office of the U.S. Trade Representative, the Export-Import Bank, the Overseas Private Investment Corporation, and the U.S. Trade and Development Agency.

Consolidating these agencies along with other related programs will help entrepreneurs and businesses of all sizes grow, compete, and hire, leveraging one cohesive Department with one mission: to spur job creation and expand the U.S. economy.

In his last State of the Union Address, President Obama noted there was more that we must do to give American businesses all they need to succeed. The Federal Government is a maze of Federal agencies with overlapping services and missions, making it difficult for businesses – and especially small ones – to find the assistance they need to export, expand, and hire.

He established the Government Reform for Competitiveness and Innovation Initiative to examine how we can update the Federal government to better support America's competitiveness in a 21<sup>st</sup> century global economy. The team reached out to hundreds of businesses, experts, current and former cabinet officials and agency heads, union leaders, Members of Congress and their staff, and thousands of Federal employees to find out what is working and what is not. Across the range of conversations held by the Administration as part of the government reorganization initiative, one theme underscored repeatedly by business owners was that they are confused about where to go for assistance and often are unaware of services that would help them, particularly those trying to break into the export market for the first time.

### Fact Sheet:

Looking to make our government leaner, smarter and more consumer-friendly, the President will call on Congress to reinstate the authority that past Presidents had, over decades, to reorganize the government. With the exception of President Ford, every President from Herbert Hoover to Ronald Reagan had reorganization authority. Presidents had this sort of authority for almost the entire period from 1932 through 1984. Unlike the authority granted in the past, the President's proposal would initiate new accountability by mandating that any plan must consolidate government - reducing the number of agencies or saving taxpayer dollars.

The President will also lay out his first proposed use of that authority: consolidating six agencies into one more efficient department to promote competitiveness, exports and American business. The President knows this is a make or break moment for the middle class and those trying to reach it. The President's proposed reorganization would help small businesses grow and, in doing so, would help get more Americans back to work.

For too long, overlapping responsibilities among agencies have made it harder, rather than easier, for our small businesses to interact with their government. Those redundancies have also led to unnecessary waste and duplication. President Obama is committed to rethinking, reforming and remaking our government so that it can meet the challenges of our time and is worthy of the American people.

Today's proposal is just one example of the kind of action the authority he is requesting would allow.

### **Competing in a 21<sup>st</sup> Century Economy**

We're living in a 21<sup>st</sup> century economy with a 20<sup>th</sup> century bureaucracy. Our economy has fundamentally changed but the government has not. The needs of our citizens have fundamentally changed but their government has not. Instead, the government has grown only more complex.

Over the past three years the Obama Administration has taken numerous [steps](#) to address this problem by eliminating government waste and inefficiencies. Clearly there's more work to be done.

### **The President's First Action**

The President's first focus under the Consolidation Authority Act would be to make it easier for America's small businesses – which are America's job creators – to compete, export and grow.

Currently, there are six major departments and agencies that focus primarily on business and trade in the federal government. The six are: U.S. Department of Commerce's core business and trade functions, the Small Business Administration, the Office of the U.S. Trade Representative, the Export-Import Bank, the Overseas Private Investment Corporation, and the U.S. Trade and Development Agency.

This is redundant and inefficient. Small businesses often face a maze of agencies when looking for even the most basic answers to the most basic questions. There is a whole host of websites, toll-free numbers and customer service centers that at times offer them differing advice. The result is a system that is not working for our small businesses.

The President is proposing to consolidate those six departments and agencies into one Department with one website, one phone number and one mission – helping American businesses succeed.

One Department: there will be one Department where entrepreneurs can go from the day they come up with an idea and need a patent, to the day they start building a product and need a warehouse, to the day they are ready to export and need help breaking into new markets overseas.

The new Department will lead the development and implementation of an integrated, strategic, government-wide trade effort and have a focused capacity to help businesses grow and thrive.

### **Business USA**

We will also be unveiling a new website: BusinessUSA. This site will be a virtual one-stop shop with information for small businesses and businesses of all size that want to begin or increase exporting.

## Appendix 2: The Reorganization Act of 1977

As Codified in [Chapter 9, Title 5 of the U.S. Code](#)

### § 901. Purpose

- (a) The Congress declares that it is the policy of the United States —
- (1) to promote the better execution of the laws, the more effective management of the executive branch and of its agencies and functions, and the expeditious administration of the public business;
  - (2) to reduce expenditures and promote economy to the fullest extent consistent with the efficient operation of the Government;
  - (3) to increase the efficiency of the operations of the Government to the fullest extent practicable;
  - (4) to group, coordinate, and consolidate agencies and functions of the Government, as nearly as may be, according to major purposes;
  - (5) to reduce the number of agencies by consolidating those having similar functions under a single head, and to abolish such agencies or functions thereof as may not be necessary for the efficient conduct of the Government; and
  - (6) to eliminate overlapping and duplication of effort.
- (b) Congress declares that the public interest demands the carrying out of the purposes of subsection (a) of this section and that the purposes may be accomplished in great measure by proceeding under this chapter, and can be accomplished more speedily thereby than by the enactment of specific legislation.
- (c) It is the intent of Congress that the President should provide appropriate means for broad citizen advice and participation in restructuring and reorganizing the executive branch.
- (d) The President shall from time to time examine the organization of all agencies and shall determine what changes in such organization are necessary to carry out any policy set forth in subsection (a) of this section.

### § 902. Definitions

For the purpose of this chapter —

- (1) “agency” means —
  - (A) an Executive agency or part thereof; and
  - (B) an office or officer in the executive branch;
 but does not include the Government Accountability Office or the Comptroller General of the United States;
- (2) “reorganization” means a transfer, consolidation, coordination, authorization, or abolition, referred to in section 903 of this title; and
- (3) “officer” is not limited by section 2104 of this title.

### § 903. Reorganization Plans

- (a) Whenever the President, after investigation, finds that changes in the organization of agencies are necessary to carry out any policy set forth in section 901(a) of this title, he shall prepare a reorganization plan specifying the reorganizations he finds are necessary. Any plan may provide for —
- (1) the transfer of the whole or a part of an agency, or of the whole or a part of the functions thereof, to the jurisdiction and control of another agency;
  - (2) the abolition of all or a part of the functions of an agency, except that no enforcement function or statutory program shall be abolished by the plan;

- (3) the consolidation or coordination of the whole or a part of an agency, or of the whole or a part of the functions thereof, with the whole or a part of another agency or the functions thereof;
- (4) the consolidation or coordination of part of an agency or the functions thereof with another part of the same agency or the functions thereof;
- (5) the authorization of an officer to delegate any of his functions; or
- (6) the abolition of the whole or a part of an agency which agency or part does not have, or on the taking effect of the reorganization plan will not have, any functions.

The President shall transmit the plan (bearing an identification number) to the Congress together with a declaration that, with respect to each reorganization included in the plan, he has found that the reorganization is necessary to carry out any policy set forth in section 901(a) of this title.

(b) The President shall have a reorganization plan delivered to both Houses on the same day and to each House while it is in session, except that no more than three plans may be pending before the Congress at one time. In his message transmitting a reorganization plan, the President shall specify with respect to each abolition of a function included in the plan the statutory authority for the exercise of the function. The message shall also estimate any reduction or increase in expenditures (itemized so far as practicable), and describe any improvements in management, delivery of Federal services, execution of the laws, and increases in efficiency of Government operations, which it is expected will be realized as a result of the reorganizations included in the plan. In addition, the President's message shall include an implementation section which shall

- (1) describe in detail
  - (A) the actions necessary or planned to complete the reorganization,
  - (B) the anticipated nature and substance of any orders, directives, and other administrative and operational actions which are expected to be required for completing or implementing the reorganization, and
  - (C) any preliminary actions which have been taken in the implementation process, and
- (2) contain a projected timetable for completion of the implementation process. The President shall also submit such further background or other information as the Congress may require for its consideration of the plan.

(c) Any time during the period of 60 calendar days of continuous session of Congress after the date on which the plan is transmitted to it, but before any resolution described in section 909 has been ordered reported in either House, the President may make amendments or modifications to the plan, consistent with sections 903–905 of this title, which modifications or revisions shall thereafter be treated as a part of the reorganization plan originally transmitted and shall not affect in any way the time limits otherwise provided for in this chapter. The President may withdraw the plan any time prior to the conclusion of 90 calendar days of continuous session of Congress following the date on which the plan is submitted to Congress.

#### **§ 904. Additional Contents of Reorganization Plan**

A reorganization plan transmitted by the President under section 903 of this title —

- (1) may, subject to section 905, change, in such cases as the President considers necessary, the name of an agency affected by a reorganization and the title of its head, and shall designate the name of an agency resulting from a reorganization and the title of its head;
- (2) may provide for the appointment and pay of the head and one or more officers of any agency (including an agency resulting from a consolidation or other type of reorganization) if the President finds, and in his message transmitting the plan declares, that by reason of a reorganization made by the plan the provisions are necessary;
- (3) shall provide for the transfer or other disposition of the records, property, and personnel affected by a reorganization;

- (4) shall provide for the transfer of such unexpended balances of appropriations, and of other funds, available for use in connection with a function or agency affected by a reorganization, as the President considers necessary by reason of the reorganization for use in connection with the functions affected by the reorganization, or for the use of the agency which shall have the functions after the reorganization plan is effective; and
- (5) shall provide for terminating the affairs of an agency abolished.

A reorganization plan transmitted by the President containing provisions authorized by paragraph (2) of this section may provide that the head of an agency be an individual or a commission or board with more than one member. In the case of an appointment of the head of such an agency, the term of office may not be fixed at more than four years, the pay may not be at a rate in excess of that found by the President to be applicable to comparable officers in the executive branch, and if the appointment is not to a position in the competitive service, it shall be by the President, by and with the advice and consent of the Senate. Any reorganization plan transmitted by the President containing provisions required by paragraph (4) of this section shall provide for the transfer of unexpended balances only if such balances are used for the purposes for which the appropriation was originally made.

#### **§ 905. Limitation on Powers**

(a) A reorganization plan may not provide for, and a reorganization under this chapter may not have the effect of —

- (1) creating a new executive department or renaming an existing executive department, abolishing or transferring an executive department or independent regulatory agency, or all the functions thereof, or consolidating two or more executive departments or two or more independent regulatory agencies, or all the functions thereof;
- (2) continuing an agency beyond the period authorized by law for its existence or beyond the time when it would have terminated if the reorganization had not been made;
- (3) continuing a function beyond the period authorized by law for its exercise or beyond the time when it would have terminated if the reorganization had not been made;
- (4) authorizing an agency to exercise a function which is not expressly authorized by law at the time the plan is transmitted to Congress;
- (5) creating a new agency which is not a component or part of an existing executive department or independent agency;
- (6) increasing the term of an office beyond that provided by law for the office; or
- (7) dealing with more than one logically consistent subject matter.

(b) A provision contained in a reorganization plan may take effect only if the plan is transmitted to Congress (in accordance with section 903(b)) on or before December 31, 1984.

#### **§ 906. Effective Date and Publication of Reorganization Plans**

(a) Except as provided under subsection (c) of this section, a reorganization plan shall be effective upon approval by the President of a resolution (as defined in section 909) with respect to such plan, if such resolution is passed by the House of Representatives and the Senate, within the first period of 90 calendar days of continuous session of Congress after the date on which the plan is transmitted to Congress. Failure of either House to act upon such resolution by the end of such period shall be the same as disapproval of the resolution.

(b) For the purpose of this chapter —

- (1) continuity of session is broken only by an adjournment of Congress sine die; and
- (2) the days on which either House is not in session because of an adjournment of more than three days to a day certain are excluded in the computation of any period of time in which Congress is in continuous session.

- (c) Under provisions contained in a reorganization plan, any provision thereof may be effective at a time later than the date on which the plan otherwise is effective.
- (d) A reorganization plan which is effective shall be printed
  - (1) in the Statutes at Large in the same volume as the public laws and
  - (2) in the Federal Register.

### **§ 907. Effect on Other Laws, Pending Legal Proceedings, and Unexpended Appropriations**

- (a) A statute enacted, and a regulation or other action made, prescribed, issued, granted, or performed in respect of or by an agency or function affected by a reorganization under this chapter, before the effective date of the reorganization, has, except to the extent rescinded, modified, superseded, or made inapplicable by or under authority of law or by the abolition of a function, the same effect as if the reorganization had not been made. However, if the statute, regulation, or other action has vested the functions in the agency from which it is removed under the reorganization plan, the function, insofar as it is to be exercised after the plan becomes effective, shall be deemed as vested in the agency under which the function is placed by the plan.
- (b) For the purpose of subsection (a) of this section, “regulation or other action” means a regulation, rule, order, policy, determination, directive, authorization, permit, privilege, requirement, designation, or other action.
- (c) A suit, action, or other proceeding lawfully commenced by or against the head of an agency or other officer of the United States, in his official capacity or in relation to the discharge of his official duties, does not abate by reason of the taking effect of a reorganization plan under this chapter. On motion or supplemental petition filed at any time within twelve months after the reorganization plan takes effect, showing a necessity for a survival of the suit, action, or other proceeding to obtain a settlement of the questions involved, the court may allow the suit, action, or other proceeding to be maintained by or against the successor of the head or officer under the reorganization effected by the plan or, if there is no successor, against such agency or officer as the President designates.
- (d) The appropriations or portions of appropriations unexpended by reason of the operation of the chapter may not be used for any purpose, but shall revert to the Treasury.

### **§ 908. Rules of Senate and House of Representatives on Reorganization Plans**

Sections 909 through 912 of this title are enacted by Congress —

- (1) as an exercise of the rulemaking power of the Senate and the House of Representatives, respectively, and as such they are deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of resolutions with respect to any reorganization plans transmitted to Congress (in accordance with section 903(b) of this chapter<sup>6</sup>) on or before December 31, 1984; and they supersede other rules only to the extent that they are inconsistent therewith; and
- (2) with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner and to the same extent as in the case of any other rule of that House.

### **§ 909. Terms of Resolution**

For the purpose of sections 908 through 912 of this title, “resolution” means only a joint resolution of the Congress, the matter after the resolving clause of which is as follows: “That the Congress approves the reorganization plan numbered \_\_\_\_\_ transmitted to the Congress by the President on \_\_\_\_, 19\_\_.”, and includes such modifications and revisions as are submitted by the President under section 903(c) of this

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<sup>6</sup> The reference to a “chapter” is likely an error that should have instead made reference to “this title.”

chapter. The blank spaces therein are to be filled appropriately. The term does not include a resolution which specifies more than one reorganization plan.

### **§ 910. Introduction and Reference of Resolution**

(a) No later than the first day of session following the day on which a reorganization plan is transmitted to the House of Representatives and the Senate under section 903, a resolution, as defined in section 909, shall be introduced (by request) in the House by the chairman of the Government Operations Committee of the House, or by a Member or Members of the House designated by such chairman; and shall be introduced (by request) in the Senate by the chairman of the Governmental Affairs Committee of the Senate, or by a Member or Members of the Senate designated by such chairman.

(b) A resolution with respect to a reorganization plan shall be referred to the Committee on Governmental Affairs of the Senate and the Committee on Government Operations of the House (and all resolutions with respect to the same plan shall be referred to the same committee) by the President of the Senate or the Speaker of the House of Representatives, as the case may be. The committee shall make its recommendations to the House of Representatives or the Senate, respectively, within 75 calendar days of continuous session of Congress following the date of such resolution's introduction.

### **§ 911. Discharge of Committee Considering Resolution**

If the committee to which is referred a resolution introduced pursuant to subsection (a) of section 910 (or, in the absence of such a resolution, the first resolution introduced with respect to the same reorganization plan) has not reported such resolution or identical resolution at the end of 75 calendar days of continuous session of Congress after its introduction, such committee shall be deemed to be discharged from further consideration of such resolution and such resolution shall be placed on the appropriate calendar of the House involved.

### **§ 912. Procedure after Report or Discharge of Committee; Debate; Vote on Final Passage**

(a) When the committee has reported, or has been deemed to be discharged (under section 911) from further consideration of, a resolution with respect to a reorganization plan, it is at any time thereafter in order (even though a previous motion to the same effect has been disagreed to) for any Member of the respective House to move to proceed to the consideration of the resolution. The motion is highly privileged and is not debatable. The motion shall not be subject to amendment, or to a motion to postpone, or a motion to proceed to the consideration of other business. A motion to reconsider the vote by which the motion is agreed to or disagreed to shall not be in order. If a motion to proceed to the consideration of the resolution is agreed to, the resolution shall remain the unfinished business of the respective House until disposed of.

(b) Debate on the resolution, and on all debatable motions and appeals in connection therewith, shall be limited to not more than ten hours, which shall be divided equally between individuals favoring and individuals opposing the resolution. A motion further to limit debate is in order and not debatable. An amendment to, or a motion to postpone, or a motion to proceed to the consideration of other business, or a motion to recommit the resolution is not in order. A motion to reconsider the vote by which the resolution is passed or rejected shall not be in order.

(c) Immediately following the conclusion of the debate on the resolution with respect to a reorganization plan, and a single quorum call at the conclusion of the debate if requested in accordance with the rules of the appropriate House, the vote on final passage of the resolution shall occur.

(d) Appeals from the decisions of the Chair relating to the application of the rules of the Senate or the House of Representatives, as the case may be, to the procedure relating to a resolution with respect to a reorganization plan shall be decided without debate.

(e) If, prior to the passage by one House of a resolution of that House, that House receives a resolution with respect to the same reorganization plan from the other House, then —

- (1) the procedure in that House shall be the same as if no resolution had been received from the other House; but
- (2) the vote on final passage shall be on the resolution of the other House.