

Another Delay for the USMCA? Here is what happened

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On Tuesday, January 7, 2020, the Senate Finance Committee approved the US-Mexico-Canada Agreement (USMCA) by a vote of 25-3. The markup of President Trump's replacement to the North American Free Trade Agreement (NAFTA) provided several surprises, at least from a traditional trade policy perspective. For instance, the USMCA received the support of Sherrod Brown (Democrat-Ohio), a stalwart union backer that had voted "no" on every free trade agreement since he was elected to Congress in 1992, and the agreement received more Republican "no" votes (two: Senators Pat Toomey (Republican-Pennsylvania) and Bill Cassidy (Republican-Louisiana)) than Democratic "no" votes (one: Senator Sheldon Whitehouse (Democrat-Rhode Island)).

Perhaps the biggest surprise of the day was when Senate Finance Committee Chairman Chuck Grassley (Republican-Iowa) announced that the implementing bill had been referred to several other Senate committees, likely delaying Senate consideration of the agreement until next week at the earliest and likely until after the Senate impeachment trial.

Those that track the US Senate would be correct in noting that it is unusual for a piece of legislation to be referred to multiple committees. Under normal circumstances, a bill is referred to only one committee – the one that has the preponderance of interest in the legislation. For legislation to be referred to multiple Senate committees, it requires either a joint referral for simultaneous consideration or a sequential referral for successive consideration, but this only very rarely occurs. A joint or sequential referral is typically made by unanimous consent, after negotiations between committee and party leaders, other interested senators, and the parliamentarian.

However, trade legislation is treated differently. Section 151(c) of the Trade Act of 1974 supersedes Senate rules and calls for concurrent referrals in Senate when appropriate, stating:

[Implementing bills for free trade agreements] shall be referred by the Presiding Officers of the respective Houses to the appropriate committee, or, in the case of a bill containing provisions within the jurisdiction of two or more committees, jointly to such committees for consideration of those provisions within their respective jurisdictions.

The Senate Parliamentarian determines to which committees a bill should be referred. Interestingly, she determined the original Senate version of the USMCA implementing bill (S. 3052) should only be referred to the Senate Finance Committee, but the identical House-passed version (HR 5430) should be referred to Finance, as well as the committees on Health, Education, Labor, and Pensions; Environment and Public Works; Appropriations; Foreign Relations; Commerce, Science, and Transportation; and the Budget.

Typically, the implementing bill for a free trade agreement is referred only to the Senate Finance Committee, but there is precedent for other referrals. In 2004, the Senate Parliamentarian referred the implementing bills for the Chile-United States Free Trade Agreement and the Singapore-United States Free Trade Agreement to the Senate Judiciary Committee in addition to Senate Finance. And in 1993, the implementing bill for the original NAFTA was referred to five committees in addition to Finance.

While The USMCA implementing bill will almost certainly be signed into law in the near future, the finish line may now be several more weeks down the road.

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