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Trade Promotion Authority: Possible Vote on Two-Year Extension

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Summary

Under the Trade Act of 2002 (P.L. 107-210), Congress approved expedited legislative procedures (no amendment, limited debate) for trade agreements that were entered into before July 1, 2005. The Act provided an automatic two-year extension if: (1) the President requested an extension not later than April 1, 2005; and (2) neither House of the Congress adopted an extension disapproval resolution before July 1, 2005. The President submitted the request for an extension on March 30, 2005. An extension disapproval resolution (S.Res. 100) was introduced in the Senate and referred to the Senate Finance Committee on April 6, 2005. Under the 2002 Trade Act, a resolution had to be reported out of committee to be considered on the floor. By July 1, 2005, the Senate Finance Committee had not reported out S.Res. 100. No extension disapproval resolution had been introduced in the House. Therefore, the two year extension was not disapproved, and expedited legislative procedures will apply to trade agreements entered into before July 1, 2007. This product will not be updated.

Under Title XXI (Bipartisan Trade Promotion Authority Act of 2002) of the Trade Act of 2002 (P.L. 107-210), Congress approved expedited procedures for legislation to implement trade agreements, as long as the trade agreements were reached before a deadline of July 1, 2005. The 2002 Trade Act also provided for an automatic two-year extension of that deadline, if certain conditions were met. During the first half of 2005, an issue for the 109th Congress was whether or not to disapprove the two-year extension.

Trade Promotion Authority in Brief

Trade promotion authority (TPA; formerly called fast-track authority) is an arrangement involving the executive and legislative branches that recognizes the distinct constitutional responsibilities of those branches regarding trade negotiations and trade policy. By virtue of the constitutional power to conduct foreign affairs, the President has authority to negotiate and enter into agreements with foreign countries, including those agreements dealing with trade and tariff policy. At the same time, the Constitution gives Congress the primary power over trade policy under Article I, and the Congress decides

whether or not to approve statutory changes that are called for under trade agreements that the President has negotiated.

The basic provisions of TPA were established in the Trade Act of 1974 (P.L. 93-618) for a limited period of time. Those provisions were renewed periodically, most recently under the Trade Act of 2002. Under TPA, Congress provides that, if a trade agreement is reached by a given deadline, it will consider legislation to implement the trade agreement under expedited procedures that prohibit amendments, limit debate, and set deadlines on congressional action. As a condition for these procedural restraints, Congress requires the President to consult with appropriate congressional bodies before and during the negotiations, notify Congress before beginning any negotiations and before entering into a trade agreement, provide reports as specified, and meet other conditions as provided.[1] Congress also places restrictions on the purpose of a trade agreement and on language in an implementing bill. Through these provisions, Congress sets trade negotiating objectives and is informed of progress in the negotiations, and the President is assured that a trade agreement will receive a timely, up-or-down vote in Congress.

TPA Extension in the Trade Act of 2002 and Subsequent Action

Under the 2002 Act as amended,[2] Congress approved TPA for trade agreements entered into before July 1, 2005, but also approved an automatic two-year extension of TPA to cover trade agreements entered into before July 1, 2007, as long as two conditions were met. First, the President had to request the two-year extension by April 1, 2005. Together with the request, the President was required to submit: (1) a description of all major trade agreements that have been negotiated and might be considered under TPA, and the anticipated schedule for submitting those agreements for congressional approval; (2) a description of progress in negotiations to achieve the purposes and objectives that Congress approved in the title, and a statement that this progress justifies continuation of negotiations; and (3) a statement of the reasons why the extension is needed to complete the negotiations. In effect, these provisions would require the President to justify how he had used TPA until then and to describe how he might use it over the next two years.

On March 30, 2005, the President submitted a report of approximately 260 pages that contains the request for TPA extension.[3] The report provided an overview of the Administration's trade policy and related that trade policy to trade agreements concluded under TPA and to trade negotiations in progress. Lengthy appendices included detailed descriptions of free-trade agreements (FTAs) that had been concluded under TPA provisions and of FTAs under negotiation,[4] as well as a comprehensive summary of each concluded FTA and how each FTA made progress in achieving the TPA objectives.

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[1] See CRS Report RL31974. *Trade Agreements: Requirements for Presidential Consultations, Notices, and Reports to Congress Regarding Negotiations*, by (name redacted).

[2] Some dates in the 2002 Trade Act were amended by section 2004(a)(17) of the Miscellaneous Trade and Technical Corrections Act of 2004 (P.L. 108-429).

[3] Executive Office of the President. *Report to the Congress on the Extension of Trade Promotion Authority*. Available on the U. S. Trade Representative's web page at [http://www.ustr.gov].

[4] For information on negotiations in progress, see CRS Issue Brief IB10123. *Trade Negotiations in the 109th Congress*, by (name redacted) and Lenore M. Sek.

A second condition for the two-year extension of TPA was that neither House of Congress adopt an extension disapproval resolution before July 1, 2005. The 2002 Trade Act included the language for such a disapproval resolution. It stated that an extension disapproval resolution could be introduced in either House of Congress by any Member, and a disapproval resolution had to be referred in the House of Representatives to the Committees on Ways and Means and on Rules. Although there is no provision on committee referral in the Senate, the prescribed procedure appears to presume a referral to the Committee on Finance, which has jurisdiction over trade matters in the Senate.

Under the 2002 Trade Act, expedited procedures (19 U.S.C. 2192(d) and (e)) would apply to floor consideration of extension disapproval resolutions. The Act, however, provided that it was not in order for: (1) the Senate to consider any extension disapproval resolution not reported by the Committee on Finance; (2) the House of Representatives to consider any extension disapproval resolution not reported by the Committees on Ways and Means and on Rules; or (3) either House of the Congress to consider an extension disapproval resolution after June 30, 2005.

Given these provisions, the committees could take various actions on a disapproval resolution. A committee could vote to adopt a motion to report a disapproval resolution favorably or unfavorably (see next section for committee action on extension disapproval resolutions in 1991). In such cases, the resolution could be brought to the floor. Also, a committee could vote down a motion to report, or simply not take up the resolution at all. In these cases, a resolution would be stopped in committee.

On April 6, 2005, Senator Byron Dorgan introduced extension disapproval resolution S.Res. 100, which was referred to the Senate Finance Committee. In his submission statement, Senator Dorgan indicated he believed that the Finance Committee would not allow the resolution to go to the Senate floor.[5] In late June 2005, Senator Dorgan and eight other Senators sent a letter to Senator Charles Grassley, Chairman of the Senate Finance Committee, calling for the release of S.Res. 100 to the full Senate for an up-or-down vote.[6] By the deadline of June 30, 2005, the Finance Committee had not acted on S. 100, and there had been no disapproval resolution introduced in the House.

Since both conditions for the two-year extension had been met, the extension became automatic. TPA was extended to trade agreements entered into by June 30, 2007. In a press statement on July 1, 2005, U.S. Trade Representative Rob Portman said that the extension of TPA showed "...Congressional support for U.S. economic leadership and participation in the global trading system."[7]

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[5] *Congressional Record*. April 6, 2005, p. S3318.

[6] Office of U.S. Senator Byron Dorgan. "Dorgan Calls on Senator Grassley to Bring Fast-Track Resolution to Floor Before Automatic Renewal." News Release. June 28, 2005.

[7] Office of the U.S. Trade Representative. "Statement of USTR Rob Portman Regarding Today's Extension of Trade Promotion Authority and the U.S. Trade Agenda." Press Release. July 1, 2005.

Prior Vote on TPA Extension

A two-year extension of TPA, then called fast-track authority, was considered only once before. Under the Omnibus Trade and Competitiveness Act of 1988 (P.L. 100-418), Congress approved fast-track authority for trade agreements entered into before June 1, 1991, and provided for a two-year extension. The provisions in the 1988 Act were almost identical to those in the 2002 Act. In 1988, the two-year extension was principally intended to allow more time for the on-going multilateral trade negotiations (Uruguay Round) in the World Trade Organization (WTO). By the time then-President George H. W. Bush requested the two-year extension, however, he had notified Congress of his intent to negotiate a North American Free Trade Agreement (NAFTA). That agreement, not the WTO negotiations, became the center of the debate on the two-year extension.[8] The debate was also influenced by the political situation at the time: the President was a Republican, and both Houses of Congress were controlled by the Democratic party.

The President requested the two-year extension on March 1, 1991.[9] Disapproval resolutions were introduced in the House (H. Res. 101) on March 6, 1991, and in the Senate (S.Res. 78) on March 13, 1991. On March 7, 1991, the Chairmen of the Senate Finance Committee and of the House Ways and Means Committee sent a letter to the President saying that the President should address some concerns about environmental standards, worker rights, and similar issues, before Congress voted on extension of fast-track procedures. The House Majority Leader sent a letter to the President with a similar intent on March 27, 1991. On May 1, 1991, the President responded with an extensive action plan that addressed the concerns raised. On May 9, 1991, the House Majority Leader introduced a resolution (H.Res. 146) that the President be accountable in meeting the action plan and other objectives.

On May 23, 1991, the House defeated its disapproval resolution by a vote of 192-231, but approved H.Res. 146 by a vote of 328-85.[10] The next day, the Senate defeated its disapproval resolution by a vote of 36-59.[11] These actions indicated that, while Congress did not want to prevent the two-year extension, it planned to closely monitor the negotiations, particularly with respect to a NAFTA.

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[8] For more information on the earlier debate on extension of trade negotiating authority, see CRS Report 97-885 E, *Fast-Track Legislative Procedures for Trade Agreements: The Great Debate of 1991*, by (name redacted).

[9] Message from the President of the United States. *The Extension of Fast Track Procedures.* House Document 102-51. 102nd Congress, 1st session. March 4, 1991. 588 p.

[10] The House Rules Committee ordered reported H.Res. 101 (disapproval resolution) and H.Res. 146, both without recommendation, by voice vote, and subsequently reported both measures. The House Ways and Means Committee ordered H.Res. 101 adversely reported by a 9-27 vote and reported the measure. It ordered H.Res. 146 (amended) favorably reported by voice vote and reported the measure as amended.

[11] The Senate Finance Committee ordered reported unfavorably the disapproval resolution S.Res. 78 by a 3-15 vote.

Implications for U.S. Trade Policy and Negotiations

To understand the implications of the issue of TPA renewal for U.S. trade negotiations, it might be helpful to look at the reason why expedited procedures for implementing bills were approved in the first place. During multilateral negotiations in the 1960s (the Kennedy Round), the Administration negotiated two non-tariff trade agreements without explicit authority from Congress. The prevailing view in Congress was that the President had overstepped his delegated tariff-cutting power in negotiating these non-tariff trade agreements, and Congress decided not to enact legislation to implement the two non-tariff trade agreements. This result showed that the two branches of government would have to be more collaborative, if trade agreements in the future were to be negotiated and brought before Congress with any likelihood of approval. The compromise reached in the 1974 Trade Act was that Congress would guarantee an up-or-down vote without amendment, as long as the President consulted with Congress and followed its directives in the negotiations.

A central question in considering extension of TPA is whether or not a trade policy that promotes the negotiation and approval of trade agreements is in the national interest. Supporters of trade agreements argue that the agreements offer opportunities for U.S. exporters in markets that otherwise would be closed to them and provide consumers with a wider selection of low-cost products. They also state that trade agreements increase the level of trade, which helps the national economy to grow. Opponents of trade agreements argue that the agreements are often biased toward the business community and do not give enough consideration to other important objectives, such as saving workers' jobs or protecting the environment. Some opponents believe that certain trade restrictions should be left in place to protect domestic industries.

Another question is, if Congress decides that negotiation of trade agreements should be part of U.S. trade policy, is TPA necessary for those negotiations? Trade negotiators generally view TPA and its assurance of an up-or-down congressional vote as important, if not critical, for their credibility in trade negotiations. They argue that many foreign countries may not elect to negotiate with the United States if TPA is not in effect. This is because without TPA's ban on amendments, Congress can alter an implementing bill and thereby possibly change the nature of the agreement or the balance of concessions achieved. Supporters of TPA argue that substantial changes might require renegotiation and might even kill the agreement. On the other hand, opponents of TPA are reluctant to give power to the President to conclude a trade agreement that Congress cannot change. They argue that the ban on amendments under TPA is an abdication of the constitutional role of Congress to regulate foreign commerce. Some opponents also claim that the consultation requirements of TPA have been ineffective, because the President has consulted in-depth with only a small number of Members.

It is generally believed that the expedited procedures of TPA probably have the greatest effect for negotiations involving a large number of countries. The United States is currently participating in multilateral talks in the Doha round of negotiations in the World Trade Organization (WTO). These talks, which began in 2001 and are probably at least a year from conclusion, involve 148 WTO member countries. Because of the complexity of such talks, renegotiation of an agreement among 148 countries would be tremendously difficult, so U.S. negotiators see TPA's ban on amendments as crucial to maintaining any final balance of concessions in an agreement. With a two-year extension

of TPA, the current negotiations would continue, and the new deadline of June 30, 2007, would effectively set the deadline for signing an agreement in the WTO. Without TPA, negotiations could have continued, but with no clear deadline and the possibility of amendments in Congress, other countries might have reconsidered the scope and timing of further talks.

Similar arguments apply to a Free Trade Area of the Americas (FTAA). Negotiations on an FTAA began in 1994, and 34 countries are participating. Talks so far have been slow and difficult, and some might argue that, because of the difficulty of these negotiations, TPA is important because any renegotiation would be highly difficult. On the other hand, others might argue that TPA does not matter much, because it is unlikely that an FTAA can be reached by the extended deadline (June 30, 2007).

For smaller regional or bilateral negotiations, the effect of TPA on any set of trade negotiations might depend on how economically or politically controversial those negotiations are. The more controversial the talks, the greater the possibility that substantial amendments would be considered, and the greater the effect of any ban on amendments with TPA. For example, NAFTA was highly controversial, and it is likely that without the expedited procedures of fast-track authority (TPA), an implementing bill would have been substantially amended. In comparison, the free-trade agreement with Jordan was negotiated without TPA, and the implementing bill was changed little during congressional consideration.

Several smaller regional or bilateral trade agreements are now under negotiation, and they were not concluded in time to qualify for TPA without the two-year extension. Most, if not all, might be concluded in time to qualify for TPA with the two-year extension. How important might the TPA expedited procedures be, if the Administration concludes these agreements and submits implementing bills to Congress under those procedures? It is difficult to say. Agreements under negotiation include free-trade agreements (FTAs) with Thailand, Panama, the United Arab Emirates and Oman, countries in the Andean region, and countries in southern Africa. Negotiations probably would have continued with or without TPA. With TPA, implementing bills will be considered under expedited procedures without amendment; without TPA, bills would have been considered under normal legislative procedures and would have been amendable. Some of the negotiations have controversial aspects, such as claims that worker standards are not adequate, or arguments that U.S. apparel makers and U.S. sugar producers will face damaging competition from foreign producers. Some are controversial because they have stronger political than economic rationales. A two-year extension of TPA could have been more important for some of these negotiations than for others.

With TPA extended for two years, new negotiations might be considered. For example, the Administration might propose FTA talks with additional countries in the Middle East, as part of the Administration's proposal for a Middle East Free Trade Area, although time could be an important consideration. If TPA had not been extended, the Administration probably would have been more restrained in pursuing new trade negotiations, or might have pursue less controversial negotiations. Regardless of whether or not TPA was extended, trade agreements entered into before June 30, 2005 (an FTA with five Central American countries and the Dominican Republic and an FTA with Bahrain) already qualified for expedited procedures for an implementing bill.