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Trade Promotion (Fast-Track) Authority in the Trade Act of 2002

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Summary

On August 6, 2002, President George W. Bush signed the Trade Act of 2002 (P.L. 107-210). Title XXI of the act granted “trade promotion authority” (TPA) to the President. Those provisions included negotiating objectives for trade agreements. They also stipulated that if the notification and consultation requirements and other conditions specified were met by the President, implementing legislation could be considered under expedited legislative procedures (limited debate and no amendment). This report gives an overview of the TPA provisions in the Trade Act of 2002, which could apply to a number of ongoing trade negotiations. It will not be updated.

On July 27, 2002, the House passed (215-212) the conference report on H.R. 3009 (H.Rept. 107-624), the Trade Act of 2002. The Senate approved (64-34) the conference report on August 1, 2002. The President signed the measure (P.L. 107-210) on August 6, 2002. Title XXI of the Trade Act of 2002 granted “trade promotion authority” (TPA) to the President. Under TPA, if congressionally specified conditions are met, the President may negotiate and enter into trade agreements with later implementing legislation considered by the Congress under expedited legislative procedures (limited debate and no amendment).¹

¹ This report is an update of CRS Report RL31445, *Trade Promotion (Fast-Track) Authority: A Comparison of Bills Approved by the House and by the Senate with Notes on the Conference Report (H.R. 3009)*, by (name redacted) and (name redacted). For further information, see also the following: CRS Report RL31844, *Trade Promotion Authority (Fast-Track Authority for Trade Agreements): Background and Developments in the 107th Congress*, by (name redacted); CRS Report RL31974, *Trade Agreements: Requirements for Presidential Consultations, Notices, and Reports to Congress Regarding Negotiations*, by (name redacted); CRS Report RL32011, *Trade Agreements: Procedure for Congressional Approval and Implementation*, by (name redacted); and CRS Report RS22102, *Trade Promotion Authority: Possible Vote on Two-Year Extension*, by (name redacted).

Provisions in the Trade Act of 2002

Short Title and Findings. The title of the legislation is the Bipartisan Trade and Promotion Authority Act of 2002. Two of the three findings link national security and trade. The third finding states that support for trade negotiations requires that dispute settlement procedures neither add to nor diminish rights and obligations and specifically refers to the WTO dispute bodies.

Trade Negotiating Objectives. The 2002 act sets out what Congress considers to be the goals the President must accomplish in negotiating trade agreements in order for those agreements to receive expedited treatment under TPA. This section is divided into subsections on “Overall Trade Negotiating Objectives,” “Principal Trade Negotiating Objectives,” “Promotion of Certain Priorities,” “Consultations,” and “Adherence to Obligations Under Uruguay Round Agreements.”

Overall Trade Negotiating Objectives. The act contains nine overall objectives. Four objectives have broad trading goals: obtain more open market access; reduce trade barriers; strengthen trading disciplines; and promote U.S. and world economic growth. Four other objectives specifically relate to labor and the environment: ensure mutually supportive trade and environment policies; promote respect for workers and children; work against weakening of environmental or labor laws; and promote the international convention on the worst forms of child labor. Another objective calls for fair and equal treatment for small businesses.

Principal Trade Negotiating Objectives. The act has 17 specific objectives. Some objectives seek the reduction or elimination of barriers in the trade of goods and services, in foreign investment, and in electronic commerce. Others focus on the WTO by calling for broader participation and negotiations on transparency, dispute settlement, extended topics (civil aircraft, rules of origin), and border taxes. One objective seeks protections for labor and the environment, such as assurance that parties will enforce their environmental and labor laws, and another calls for commitments by countries to vigorously enforce their laws prohibiting the worst forms of child labor. One objective calls for establishment of rules and standards to stop corruption, and another calls for disincentives for governments to use regulatory practices to give advantages to domestic interests. Other objectives call for further protection of intellectual property rights (IPR), reciprocal trade in specific sectors (agriculture and textiles), and preservation of U.S. trade remedy laws.

Promotion of Certain Priorities. The act lists 12 Presidential actions that Congress considers necessary in order to maintain U.S. competitiveness. Almost all of these actions relate to protections for labor or the environment. A few actions relate to other domestic objectives such as health and safety, to U.S. trade remedy laws, and to currency movements.

Consultations. The act requires the U.S. Trade Representative (USTR) to consult with congressional revenue committees and other committees with jurisdiction, with the Congressional Oversight Group, and with congressional trade advisors. Consultation requirements are also addressed later in the act.

Adherence to Obligations Under Uruguay Round Agreements. The act requires the President to take into account the degree to which trading partners adhere to obligations under the Uruguay Round Agreements.

Trade Agreements Authority. Under Section 2103(a), the act approves authority for the President to negotiate tariff agreements and proclaim changes in tariff levels within specified limits. It requires that, if expedited procedures (“trade authorities procedures”) for an implementing bill will apply, such agreements be entered into before June 1, 2005, or by June 1, 2007.²

Under Section 2103(b), the action approves authority for the President to enter into other tariff and nontariff trade agreements by the same deadlines as for tariff agreements. These agreements would have to make progress in meeting the negotiating objectives, and the President would have to satisfy the outlined consultation and assessment requirements. Legislation to implement these trade agreements would be considered under trade authorities procedures, if provisions of the legislation: (1) approved the trade agreement and any statement of administrative action; and (2) were necessary or appropriate to implement the trade agreement, if statutory changes are required to implement the trade agreement. The act calls such legislation an “implementing bill.”

Trade authorities procedures would apply to an implementing bill for trade agreements if: (1) the President requests the extension and provides specified information by March 1, 2005³; and (2) neither house of Congress adopts an extension disapproval resolution before June 1, 2005⁴. The act requires reports by private sector trade advisors and by the U.S. International Trade Commission (ITC).

Consultations and Assessment. The President, at least 90 days before starting negotiations under Section 2103(b), would be required to provide notice of intent to enter into negotiations and other information. Before and after giving notice, the President would have to consult with the revenue committees and such other committees the President deems appropriate, and the newly established Congressional Oversight Group (COG, described later).

For *agriculture* negotiations, the act requires the President to assess how U.S. tariffs on agricultural products compare to foreign tariffs on similar products and decide whether negotiations will address any disparity. It requires the President to consult with the revenue committees and the agriculture committees and establishes special consultation and assessment procedures for import sensitive agricultural products. The act requires the President to assess U.S. and foreign tariffs on *textiles and apparel* and to consult with the revenue committees on tariffs and negotiating objectives.

The act requires that, before entering into an agreement under Section 2103(b), the President must consult with the revenue committees, other committees of jurisdiction, and

² Deadlines for tariff and for other tariff and nontariff trade agreements were amended to *July* 1, 2005 and *July* 1, 2007 under P.L. 108-429.

³ Deadline changed to *April* 1, 2005 under P.L. 108-429.

⁴ Deadline changed to *July* 1, 2005 under P.L. 108-429.

the COG. It specifies what the consultation should cover. It also provides that at least 180 calendar days before entering into a trade agreement (90 days for an agreement with Chile or Singapore), the President must report to the revenue committees on proposals that might be in the final agreement that would amend U.S. trade remedy laws, and how these proposals relate to the negotiating objective on trade remedies. The act provides that a resolution may be introduced with respect to the President's report. This resolution would state that the proposed changes in the President's report were inconsistent with the trade remedy negotiating objective. Special legislative procedures would apply to the resolution as long as the revenue committee of that chamber had not reported out another resolution with respect to the President's report and the committee had not reported out a disapproval resolution under section 2105(b) [lack of notice or consultations].

The act requires private sector advisors to submit a report on trade agreements to the President, the Congress, and the USTR not later than 30 days after the President notifies Congress of the intent to enter into a trade agreement. It requires the President to give details of the agreement to the ITC before entering into the agreement, and requires the ITC to submit an economic assessment to Congress within 90 days after the President enters into the agreement.

Implementation of Trade Agreements. The act set out procedures for Presidential notification of Congress before entering into an agreement and submission to Congress of legislation to implement trade agreements negotiated under trade promotion authority. The President, at least 90 calendar days before entering into an agreement, must notify Congress of the intent to enter into the agreement. Within 60 days of entering into the agreement, the President must submit a description of legal changes for compliance. Procedures include deadlines for notification and for submission and require supporting information. No deadline is given for submitting implementing legislation, but when the President does submit the legislation, the legislation must be submitted together with a statement of administrative action and other supporting information. The act described this supporting information. It also puts legal limits on any understanding with a foreign government that was not disclosed to Congress before introduction of an implementing bill.

In addition, the act stipulates that an implementing bill will not receive expedited treatment if, within a 60-day period, both Houses of Congress agree to a procedural disapproval resolution regarding the trade agreement because of the lack of notification or consultation with Congress on the part of the President. The act sets out procedures for considering procedural disapproval resolutions. It requires the Secretary of Commerce to submit a report with a strategy to address congressional concerns about whether WTO dispute settlement panels and the WTO Appellate Body have added to U.S. obligations or diminished U.S. rights. If the report is not provided, the trade promotion procedures will not apply to the implementing bill.

Treatment of Certain Trade Agreements for Which Negotiations Have Already Begun. The act allows an exemption from pre-notification requirements for certain trade agreements. This exemption applies to a trade agreement that (1) is entered into under the WTO, entered into with Chile, entered into with Singapore, or establishes a Free Trade Area of the Americas; and (2) results from negotiations that started before enactment of the TPA bill.

Congressional Oversight Group. The act establishes a new congressional advisory body called the Congressional Oversight Group (COG). Members of COG are the chairman and ranking member of the revenue committees, three other members from each of those committees (no more than two from the same party), and the chairman and ranking member from any other committees with jurisdiction. Under the act's provisions, COG members are official advisers to the U.S. delegation in trade negotiations and consult with and provide advice to the USTR on the formulation of objectives, negotiating strategies, and other trade matters.

The act requires the USTR, in consultation with the chairman and ranking member of the revenue committees, to develop guidelines for the exchange of information between the COG and the USTR. The guidelines provide for, among other things: regular, detailed briefings on negotiating objectives, access to documents, coordination during negotiations, and consultation on compliance and enforcement.

Other Provisions. The act requires the President to submit, along with the final text of the trade agreement, a plan for implementing and enforcing the trade agreement. The plan must include (along with cost analyses) descriptions of additional border personnel needed, additional personnel for monitoring and implementing the trade agreement, additional U.S. Customs Service equipment, and the impact on State and local governments.

The act states that trade promotion authority is likely to increase the trade activities of the primary committees of jurisdiction and Members (through the creation of COG), and that the primary committees of jurisdiction should have adequate staff for these increased activities.

It requires the ITC to report on the five agreements implemented under expedited procedures in the past. It also identifies the Assistant USTR as responsible for ensuring small business interests are considered in trade negotiations.

Outlook

The Administration has concluded a free-trade agreement (FTA) with Bahrain, and legislation to implement the FTA might be presented to Congress by year-end 2005 or in 2006. Such legislation could be considered under the TPA provisions.

In addition, the United States is participating in several bilateral, regional, and multilateral trade initiatives, and if these are concluded by the TPA deadline, implementing legislation might be considered under the TPA provisions. Negotiations are underway with the Southern African Customs Union (SACU), Panama, Thailand, three Andean nations (Colombia, Peru, and Ecuador), the United Arab Emirates, and Oman. Further, the United States and other countries in the Western Hemisphere are negotiating a Free Trade Area of the Americas, and 148 countries including the United States are negotiating a multilateral trade agreement in the World Trade Organization.

As stated earlier, the TPA provisions apply to trade agreements entered into by mid-2007. If a trade agreement is entered into after TPA expires, implementing legislation would be considered under normal legislative procedures. Thus, expiration of TPA is an important consideration in the timing of negotiations.

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