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Trade Promotion Authority (TPA): Issues, Options, and Prospects for Renewal

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Summary

On July 1, 2007, Trade Promotion Authority (TPA — formerly fast track) is set to expire, and with it a special authority that Congress grants to the President to negotiate certain trade agreements and to have their implementing bills considered under expedited legislative procedures, provided the President complies with certain statutory obligations. The procedures allow Congress to exercise its constitutional authority over trade, while giving the President added negotiating flexibility by assuring U.S. trade partners that final agreements are given swift and unamended consideration. The United States is currently engaged in multiple trade negotiations that may not be completed before TPA expires, raising the question of its renewal.

TPA reflects years of debate, cooperation, and compromise between Congress and the Executive Branch. Congress has express constitutional authority to impose duties and regulate foreign commerce, while the President has the sole authority to negotiate international agreements and exerts broad power over U.S. foreign policy. TPA arose from a pragmatic need to accommodate these authorities in the conduct of U.S. trade policy, as well as address concerns that constituent pressures can often lead to poor trade policy decisions. The "Smoot-Hawley" Tariff Act of 1930, for example, raised tariffs significantly, diminishing trade and prolonging the Great Depression. In response, Congress delegated to the President in 1934 authority to negotiate pre-approved reductions in tariff rates. TPA evolved in 1974 from this precedent to allow the President to negotiate non-tariff barriers (NTBs), provided he comply with various congressional requirements set out in the statute.

The core provisions of the fast track legislative procedures have remained virtually unchanged since they were first enacted, although Congress has expanded trade negotiation objectives, oversight, and presidential notification requirements. While early versions of fast track/TPA received broad bipartisan support, renewal efforts became increasingly controversial as fears grew over the perceived negative effects of trade, and as the trade debate became more partisan in nature. Congress last renewed TPA in the Trade Act of 2002 following a pitched battle and largely partisan-line vote. Two key issues dominated: labor and environment provisions and guaranteeing a bipartisan congressional role in trade policy making.

As the debate over TPA renewal heats up, these two issues are still on center stage, flanked by a handful of other trade policy concerns. Congress faces a difficult challenge given the number of trade negotiations, including the WTO Doha Round and bilateral agreements with South Korea, Malaysia, and Panama, among others, that are close to being concluded before TPA expires. Congress can choose among various options: no action; temporary extension; revision and renewal; permanent authority; or some hybrid solution. How this issue plays out depends on a host of variables including the status of uncompleted negotiations, the economic effects of pursuing trade liberalization as perceived by various constituents, the political will to compromise between the Bush Administration and Congress, and the willingness and ability of the 110th Congress, with its new Members and majority, to craft a truly bipartisan solution. This report will be updated as events warrant.

Contents

Trade Promotion Authority (TPA): Issues, Options, and Prospects for Renewal

On July 1, 2007, Trade Promotion Authority (TPA — formerly known as fast track) is scheduled to expire, and with it the authority that Congress grants to the President to enter into certain trade agreements, and to have their implementing bills considered under expedited legislative procedures. Although the President has the authority to negotiate trade agreements, he may need implementing legislation and thus congressional action to bring them into force. Currently, the United States is engaged in multiple trade agreement negotiations that may not be completed before the current TPA is set to expire. Thus, the issue of TPA renewal is central to the conduct of trade negotiations during the 110th Congress.

For over 30 years, Congress has granted the President TPA, agreeing to approve trade implementing legislation expeditiously, provided the President meets certain negotiating objectives and consultation requirements. This arrangement strikes a delicate balance by allowing Congress to exercise its constitutional authority over trade, while giving the President additional negotiating leverage by assuring trade partners that a final agreement will be given swift and unamended consideration by Congress. Earlier incarnations of TPA generated relatively little controversy and were adopted with substantial bipartisan majorities. Over time, however, trade negotiations have become more complex, involving a broader array of economic activities and policies. Congress has also insisted on tighter oversight and consultation guidelines, while the trade debate has become more partisan in nature. Consequently, congressional renewal of TPA has become increasingly controversial.

Such could be the case again if the 110th Congress takes up TPA renewal, which would likely focus on many policy and procedural questions over the content, conduct, and overall direction of U.S. trade policy. This report presents background on the development of TPA, a summary of the major provisions under the current authority, and a discussion of the issues that are likely to arise in the debate over TPA renewal. It also explores the policy options available to Congress and will track the legislative debate as it develops. The report will be updated as events warrant.

A Brief History of TPA

TPA is the product of many years of debate, cooperation, and compromise between Congress and the Executive Branch. At its foundation lie the respective constitutional powers granted to Congress and the President, as well as the pragmatic realization that a certain cooperative flexibility is needed if the United States is to negotiate trade agreements credibly. The evolution of TPA to date shows, among other things, that the Congressional-Executive partnership on trade policymaking can be strained as it adjusts to evolving political and economic conditions and shifting priorities of the two Branches.

The U.S. Constitution and Foreign Trade

The U.S. Constitution assigns express authority over foreign trade to Congress. Article I, section 8, gives Congress the power to "regulate commerce with foreign nations ..." and to "...lay and collect taxes, duties, imposts, and excises..." In contrast, the Constitution assigns no specific responsibility for trade to the President.[1] Under Article II, however, the President has exclusive authority to negotiate treaties and international agreements and exercises broad authority over the conduct of the nation's foreign affairs. Both legislative and executive authorities come into play in the development and execution of U.S. trade agreements and trade policy.

The Evolution of the Congressional-Executive Partnership

For roughly the first 150 years of the United States, the Congress exercised its authority over foreign trade by setting tariff rates on all imported products. The tariff was the main trade policy instrument and a primary source of revenue. Congressional trade debates pitted Members from manufacturing regions, mainly in the North, wanting high, protectionist tariffs, against Members from raw material exporting regions, mainly in the South, who wanted low tariffs. During this period, the President's primary role in setting trade policy was to use his foreign affairs authority to negotiate, bring into force, and implement (with the advice and consent of the Senate) general bilateral treaties of friendship, commerce, and navigation that provided most-favored-nation (MFN) treatment to the goods of the parties to those treaties with United States.[2]

Two legislative events occurred in the 1930s that radically changed how U.S. trade policy would be shaped and conducted. The first was the "Smoot-Hawley" Tariff Act of 1930 (P.L. 71-361), which set prohibitively high tariff rates in response to U.S. producers seeking protection during the height of the Great Depression. The tariffs led to retaliatory tariffs from the major U.S. trading partners, severely restricting trade, thus deepening and prolonging the effects of the depression.

The damaging effects of Smoot-Hawley inspired the second major trade legislative event in the 1930s. Congress, with the guidance and encouragement of Secretary of State Cordell Hull, himself a former Senator, developed and enacted the Reciprocal Trade Agreements Act of 1934 (RTAA; P.L. 73-316). The RTAA authorized the President to negotiate reciprocal agreements that reduced tariffs within

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[1] Destler, I. M. *American Trade Politics.* Fourth Edition. Institute for International Economics. Washington, DC. 2005. p. 14.

[2] Shapiro, Hal and Lael Brainard. Trade Promotion Authority Formerly Known as Fast Track: Building Common Ground on Trade Demands More than Change. *The George Washington International Law Review.* vol 35. no. 1. p. 6. 2003. MFN, also known in U.S. law as normal trade relations (NTR) status, means that the United States would treat the imports from that trading partner no less favorably than the imports from other trading partners.

pre-approved levels. The tariffs were applied on an MFN basis, that is, reductions in tariffs on imports from one trade partner would apply to imports from all other countries with which the United States had such trade agreements. Under the RTAA, Congress authorized the president to implement the new tariffs by proclamation without additional legislation. The RTAA is important for several reasons:

- For the first time, Congress expressly *delegated* to the President major trade negotiating authority. In so doing, it is argued, Congress aimed to lessen the protectionist pressure on itself.[3]

- The Smoot-Hawley tariff was the last general tariff legislation passed by Congress. While still on the books, the Smoot-Hawley tariffs are only applied to imports from those few countries, namely Cuba and North Korea, not receiving MFN status, now called normal trade relations status (NTR) in U.S. trade laws.

- While *delegating* some authority, Congress in no way *surrendered* its trade authority. Congress subjected the tariff negotiating authority to periodic review.

Congress renewed presidential trade negotiating authority eleven times until 1962 through trade agreement extension acts. General tariff levels declined and their significance as a trade barrier lessened.[4] In addition, with the establishment of the General Agreement on Tariffs and Trade (GATT) in 1948, the major forum for trade negotiations shifted from bilateral to multilateral negotiations, and trade negotiations were eventually expanded beyond tariffs.[5]

Under the Trade Expansion Act of 1962, Congress granted the President authority for five years to negotiate the reduction or elimination of tariffs and increased its role in the process by requiring the President to submit for congressional review a copy of the concluded agreement and a presidential statement explaining why the agreement was concluded. It allowed the President to negotiate the GATT Kennedy Round (1963-1967), *the last round in which tariff reduction was the primary focus of the negotiations.*

Along with a number of tariff reduction agreements (which Congress authorized the President to implement by proclamation), the GATT countries reached agreements in two areas related to non-tariff barriers (NTBs), that is, laws and rules

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[3] Destler, *American Trade Politics,* pp. 14-15; and Pastor, Robert A. *Congress and the Politics of U.S. Foreign Economic Policy 1929-1976.* University of California Press. Berkeley, 1980. pp. 79-80.

[4] Shapiro and Brainard, *Trade Promotion Authority Formerly Known as Fast Track,* p. 11.

[5] The General Agreement on Tariffs and Trade (GATT) went into effect in 1948 as a set of rules governing international trade. Over time, the number of GATT signatories grew and the body of rules were expanded in a series of negotiations called rounds. During the Uruguay Round, the signatories agreed to establish the World Trade Organization (WTO) to administer the GATT and other multilateral trade agreements. The WTO now has 149 members.

other than tariffs that are used to restrict imports. The first was a customs valuation agreement that would have required the United States to eliminate the American Selling Price method of pricing goods at the border. The second was an antidumping agreement that would have required changes in U.S. antidumping practices.[6] Because U.S. adherence to these agreements required changes in U.S. law or regulations beyond tariff modifications, many in Congress concluded that the President had exceeded his authority. In fact, Congress passed a resolution in 1966 opposing "nontariff commitments" made by the Johnson Administration that had not been approved by Congress, setting up the debate that would eventually be resolved with the creation of fast track.[7]

The Creation of Fast Track Trade Authority

The results of the Kennedy Round made it evident that non-tariff barriers would increasingly dominate the agenda of future multilateral trade agreements requiring changes in U.S. law, if the United States were to adhere to them. Congressional concern over presidential encroachment on its legislative authority prompted Congress to seek a legislative remedy.

After the expiration of the tariff modification authority in the Trade Expansion Act of 1962, the Administration sought new authority to negotiate the Tokyo Round in the GATT, which Congress granted in the Trade Act of 1974 (P.L. 93-618). As before, the Act provided the President with the authority to negotiate and implement the reduction and elimination of tariffs within certain parameters. To address the issue of agreements that require changes in U.S. law, however, the Act stipulated that non-tariff barrier agreements entered into under the statute could only enter into force if Congress passed implementing legislation.

It was argued that subjecting implementing legislation to ordinary congressional debate and amendment procedures would defeat the purpose for delegating trade negotiating authority to the President in the first place — to reduce the parochial pressures implicit in trade policymaking. Many Members also recognized that trading partners would not be willing to negotiate agreements that would be subject to unlimited congressional debate and amendments. As stated in the Senate Finance Committee report accompanying the Trade Act of 1974:

> The Committee recognizes ... that such agreements negotiated by the Executive should be given an up-or-down vote by the Congress. Our negotiators cannot be expected to accomplish the negotiating goals ... if there are no reasonable assurances that the negotiated agreements would be voted up-or-down on their merits. Our trading partners have expressed an unwillingness to negotiate without some assurances that the Congress will consider the agreements within a definite time-frame.[8]

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[6] Destler, I. M. *Renewing Fast-Track Legislation*. Institute for International Economics. Washington, DC. September 1997. p. 6.

[7] Destler, I. M., *American Trade Politics,* pp. 71-72.

[8] U.S. Congress. Senate. Committee on Finance. *Trade Reform Act of 1974; report...on* (continued...)

As a solution, Congress agreed that each Chamber would suspend its ordinary legislative procedures and give trade agreements expedited treatment, which became known as "fast track." The relevant committees would be given limited time to consider implementing bills. Once they reached the floor, the implementing bills would be subject to time-limited debate and no amendments. In exchange, Congress required the Executive Branch to consult with relevant committees during the negotiations and to notify Congress 90 calendar days before signing an agreement. The Act also provided for the accreditation of 10 Members of Congress as advisers to the U.S. delegation of negotiators. (The Trade Act of 1962 had provided for five such advisers.) *Thus, fast track was born!*

With the trade negotiating authority and the "fast-track" provisions of the Trade Act of 1974, the United States participated in the Tokyo Round (1973-1979). As expected, this round resulted in a number of agreements on NTBs, such as government procurement practices, product standards, customs regulations, and rules for administering antidumping and countervailing duty procedures. The Trade Agreements Act of 1979 (P.L. 96-39) was the first trade agreement bill implemented by Congress under fast-track procedures.

Subsequent Renewals of Fast Track Trade Negotiating Authority

The core provisions of the fast track procedures have remained virtually unchanged since they were first enacted. They are ensconced in sections 151-154 of the Trade Act of 1974, as amended, and are not subject to sunset provisions. The ability to use them, however, is subject to time limits, and Congress has revised them over the years. (This report examines fast-track procedures and the trade negotiating authority in more detail in the following section.) The trade negotiating authority and the authority to enact tariff modifications by proclamation under the Trade Act of 1974 were in effect for 5 years ending on January 2, 1980. A residual presidential authority to enact tariff modifications expired January 2, 1982.

The Trade Agreements Act of 1979. Along with implementing the Tokyo Round agreements, the Trade Agreements Act of 1979 extended for eight years, until January 2, 1988, the presidential authority to negotiate agreements on non-tariff barriers without any other changes to the original authority. The Act did not extend presidential tariff modification authority.

The Trade and Tariff Act of 1984. This act amended the Trade Act of 1974 to provide for the negotiation and implementation of bilateral free trade agreements that both reduce or eliminate tariffs and address non-tariff barriers. Congress was taking into account the U.S.-Israel and U.S.-Canada FTAs being considered. The legislation waived for the U.S.-Israel FTA the requirement of 90-day notification to Congress prior to entering the agreement. However, for negotiations with other

[8] (...continued)
H.R. 10710...(S.Rept. 93-1298) Nov. 26, 1974. U.S. Govt. Print. Off., 1974. p. 107. As cited in CRS Report 97-41, *Fast-Track Implementation of Trade Agreements: History, Procedure, and Other Options*, by Vladimir N. Pregelj.

countries, it required the President to notify the House Ways and Means Committee and the Senate Finance Committee of his intention to begin FTA negotiations 60 days prior to entering the negotiations and provided for disapproval of the negotiations by either the House Ways and Means Committee or the Senate Finance Committee. The Act also required that agreements that lead to tariff modifications beyond a certain threshold be subject to congressional approval via implementing legislation.

Omnibus Trade and Competitiveness Act of 1988 (OTCA). The OTCA extended the president's authority to enter into trade agreements before June 1, 1993, but extended fast-track procedures only for agreements entered into before June 1, 1991. Legislation for agreements entered into after that date, but before June 1, 1993, could be approved under fast-track procedures, if the President requested an extension of such authority and it was not disapproved by either the House or the Senate. (The President requested the extension which survived proposed House and Senate resolutions of disapproval.) The OTCA also provided that Congress could withhold a trade agreement from fast track consideration, by passing resolutions of disapproval, if it determined that the USTR had failed to consult with Congress adequately during the trade negotiations. Under the OTCA provisions, Congress passed implementing legislation for the North American Free Trade Agreement (NAFTA) in 1993 (P.L. 103-82).

However, negotiations under the Uruguay Round of the GATT were not going to finish in time to meet the June 1, 1993 deadline. Congress, therefore, passed H.R. 1876, signed by the President on July 2, 1993 (P.L. 103-49), extending the authority and implementing procedures until April 16, 1994, for the Uruguay Round agreements. The votes reflected strong congressional support for extending the authority in the House (295-126) and in the Senate (76-16). The law did not change any other aspects of the fast-track authority.

A Hiatus. After the fast-track authority expired on April 16,1994, Congress did not approve new authority until the Trade Act of 2002 (H.R. 3009; P.L. 107-210). The eight-year period was the longest since January 1975 during which the "fast-track" was unavailable to President. In 1997, both the Senate Finance and House Ways and Means Committees reported out legislation to renew fast track. House Republican leaders pulled it before a floor vote at the request of the Clinton Administration because it lacked sufficient support in the House. In September 1998, the House voted on fast track authority legislation, but the bill failed to pass (180-243).

Several reasons may explain the failure of the Clinton Administration and Congress to get fast track procedures re-authorized. For one, both the Republican congressional leadership and the Clinton Administration wanted fast-track authority; however, the two sides could not agree on how labor and environmental issues should be addressed in trade agreements negotiated under a new negotiating authority. Republicans wanted limited coverage while the Clinton Administration and many Democrats in Congress preferred broader coverage. In addition, the WTO failed to launch a new round of negotiations at the 1999 Ministerial meeting in Seattle, and therefore, no *major* trade negotiations were underway that might have made the adoption of a fast-track statute a political priority.

The Bipartisan Trade Promotion Authority Act of 2002. In 2001, President Bush requested new trade agreements (fast-track) authority, which was renamed "trade promotion authority (TPA)," in part to counter a negative connotation associated with the fast track name. The new authority is contained in the Bipartisan Trade Promotion Authority Act (BTPAA) of 2002, which itself is contained in a larger bill, as Title XXI of The Trade Act of 2002 (P.L. 107-210).

The structure of TPA is consistent with previous negotiating authority. It also includes environmental and labor provisions as "principal negotiating objectives, " but does not mandate the inclusion of minimal enforceable labor standards in trade agreements.[9] The lack of a mandate to include such standards was the source of much of the opposition from labor groups and many Members of Congress. The Act also created a new mechanism for congressional oversight, the Congressional Oversight Group (COG), to operate in addition to the congressional trade advisors that have been appointed under previous versions.

The original House version of the BTPAA (H.R. 3005) passed by one vote (215-214) largely along party lines, with Republicans largely supporting the bill and Democrats largely opposing it. The legislation was combined in the Senate with the renewal of Trade Adjustment Assistance (TAA), Andean Trade Preference Act (ATPA), and Generalized System of Preferences (GSP), and passed (66-30). The conference report on the final bill, H.R. 3009, the Trade Act of 2002, was adopted by House (215-212) and by the Senate (64-34).[10]

Under the current version of TPA, Congress has approved implementing legislation for FTAs with Chile, Singapore, Australia, Morocco, the Dominican Republic, Central American countries, Bahrain, and Oman. In addition, the United States has signed FTAs with Colombia and Peru.

Because the President must notify Congress 90 calendar days before he intends to sign or enter into a prospective agreement, an agreement would have to be completed before April 2, 2007, if it is to meet the July 1, 2007 expiration date. This time constraint could affect many agreements currently under negotiation. The negotiations with Panama are nearly completed and could meet the deadline under the current TPA. The United States is also aiming to complete and sign agreements with South Korea and Malaysia before TPA expires. The United States is also interested in FTA negotiations with Thailand, the United Arab Emirates, and the members of the South African Customs Union (SACU), which are currently suspended and not expected to be completed before TPA expires.

The United States and more than 140 other members of the World Trade Organization (WTO) are engaged in a round of multilateral negotiations, the Doha

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[9] Devereaux, Charan, Robert Z. Lawrence, and Michael D. Watkins. *Case Studies in US Trade Negotiation, Volume 1: Making the Rules*. Institute for International Economics. Washington, DC. September 2006. p. 229.

[10] For details on votes on this legislation, see CRS Report RS21004, *Trade Promotion Authority and Fast Track Negotiating Authority for Trade Agreements: Major Votes*, by Carolyn C. Smith.

Development Agenda (DDA), to revise and expand rules for conducting trade in agriculture, manufactured goods, and services. In July 2006, WTO Director-General Pascal Lamy suspended the negotiations, making it highly unlikely that the WTO members can successfully conclude the DDA under the current TPA.[11] Nonetheless, the fate of DDA may be critical for any justification of the renewal or extension of TPA.

The Elements of TPA

Through TPA, in its various iterations, Congress has sought, in the context of supporting trade negotiations, to achieve four major goals: 1) to define its trade policy priorities and to have those priorities reflected in trade agreement negotiating objectives; 2) to ensure that the Executive Branch adheres to these objectives by requiring periodic notification and consultation; 3) to define the terms, conditions, and procedures under which trade agreement implementing bills will be approved; and 4) to reaffirm Congress's overall Constitutional authority over trade by placing limitations on the trade agreements authority. These four goals, and some important procedural precedents that fall outside the formal TPA process, are discussed below.

Negotiating Objectives

Congress exercises its trade policy role, in part, by defining trade negotiation objectives in TPA legislation. In the 2002 TPA, Congress made clear that trade is an important aspect of U.S. foreign economic and security policy because it generates broad benefits for the United States and the global economy. To take the fullest advantage of these benefits, Congress, drawing on its constitutional authority and historical precedent, defined the objectives that the President is to pursue in trade negotiations. Although the Executive Branch has some discretion over implementing these goals, they are definitive statements of U.S. trade policy that the Administration is expected to honor, if it expects the trade legislation to be considered under expedited rules. Given their importance, trade negotiating objectives stand at the center of the congressional debate on TPA.

Congress conveys both general and specific trade negotiating objectives in three categories: 1) overall objectives; 2) principal objectives; and 3) other priorities. These begin with broadly focused goals that encapsulate the "overall" direction trade negotiations are expected to take, such as the need to enhance U.S. and global economies. Principal objectives are far more precise and provide detailed goals that Congress expects to be integrated into trade agreements like reducing barriers to various types of trade (goods, services, agriculture, electronic commerce); protecting foreign investment and intellectual property rights; encouraging transparency, fair regulatory practices, and anti-corruption; ensuring countries protect environment and labor conditions and rights; providing for an effective dispute settlement process; and protecting the U.S. right to enforce its trade remedy laws. Objectives also include an important obligation to consult Congress, discussed in detail below.

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[11] For more information on current U.S. trade negotiations, see CRS Report RL33463, *Trade Negotiations During the 109th Congress*, by Ian F. Fergusson.

In the past, congressional debate over language defining trade negotiating objectives has been highly contested, contributing to the 2002 renewal controversy in which TPA passed virtually along partisan lines and by only the narrowest of margins.[12] This controversy reflects the importance of TPA negotiating objectives, which serve effectively as a template for future trade agreements negotiated under these guidelines. Therefore, if a debate over the language of a TPA objective is highly contentious, it stands to reason that the same issue may prove even more acerbic when a specific trade agreement is brought before Congress for approval. The labor provisions provide the best example, which are emphasized repeatedly in all three groups of negotiating objectives. The decision not to include minimal enforceable standards anywhere in TPA, however, caused acrimonious debate over both TPA and the FTAs that later adopted the TPA language on labor. This was perhaps most evident in the debate on the Dominican Republic-Central America-United States Free Trade Agreement (CAFTA-DR).

Because the structure of trade agreements mirrors TPA objectives, and highly disputed agreements based on those objectives brought before Congress under TPA have so far survived, often narrowly, all challenges from dissenters, the vote on TPA/fast track renewal is among the most critical trade votes Congress takes. The 110th Congress, therefore, is likely to proceed carefully in defining trade negotiation objectives in any new TPA authority.

Notification and Consultation

The trade agreements authority is extended to the President provided he consults regularly with Congress, including the Congressional Oversight Group (COG) created in the 2002 trade act, whose members are to be accredited as official advisors to the U.S. trade negotiation delegations. Notification and consultation requirements have been expanded over time in their own section within the TPA statute (the exception is the 90-day notification of intention to enter into an agreement found in the original "trade agreements authority" section). See **Appendix A** for a time line. First, the President must conduct certain **consultations before negotiations begin** that include:

1) notifying Congress in writing of his intention to enter into negotiations at least 90 calendar days prior to commencing negotiations;

2) consulting with the House Ways and Means, Senate Finance, other relevant committees, and the COG on the nature of the negotiations; and

3) providing special consultations on agriculture, import sensitive agricultural products, fishing and textile industry tariffs, and other issues.

The president must also conduct specific **consultations before agreements are entered into (signed),** to include:

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[12] For a summary of bills authorizing TPA and trade agreements approved under its provisions, see CRS Report RS21004, *Trade Promotion Authority and Fast-Track Negotiating Authority for Trade Agreements: Major Votes*, by Carolyn C. Smith.

1) consulting with House Ways and Means, Senate Finance, other relevant committees, and the COG with respect to the nature of the agreement, how it achieves the purposes defined in TPA, and any potential effects it may have on existing laws;

2) notifying the revenue committees at least 180 calendar days prior to entering into the agreement of any potential changes to U.S. trade remedy laws that may be required;

3) submitting private sector advisory committee reports to Congress, the President, and the USTR no later than 30 calendar days after notifying Congress of the President's intention to enter into an agreement;[13]

4) providing the U.S. International Trade Commission (USITC) with trade agreement details at least 90 days before entering into an agreement; and

5) presenting the USITC report on the impact of the agreement on the U.S. economy to Congress no later than 90 calendar days after the President enters into the agreement.

Trade Agreements Authority and Implementation

As noted above, when the statutory authority to negotiate trade agreements was limited to reducing tariffs, the trade agreement was implemented by presidential proclamation and without further congressional action, provided the tariff rate reductions were within legislatively pre-approved limits. This process changed when trade negotiations were expanded to include non-tariff barriers (NTBs). These more complex agreements led Congress to tighten its control over trade policy by establishing fast track trade negotiating authority. As set out in the Trade Act of 1974, NTB agreements could enter into force for the United States only if certain conditions were met, including the President's notifying Congress before entering into an agreement and enactment of an implementing bill, as defined in the legislation. The implementing bill, however, would be eligible for expedited legislative treatment.[14]

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[13] The private sector advisory system was established by Congress in 1974 to ensure that U.S. trade policy and negotiations benefit from, and reflect, a broad array of private sector U.S. interests. It consists of 27 committees and over 700 advisors, coordinated by the Office of the United States Trade Representative. USTR. *2006 Trade Policy Agenda and 2005 Annual Report of the President of the United States on the Trade Agreements Program*. Washington, DC. March 2006. pp. 252-255.

[14] Under TPA, reciprocal FTAs and multilateral NTB agreements that go beyond tariff reductions are treated as *congressional-executive agreements*, which require the approval of both Houses of Congress. Such approval expresses Congress' consent to bind the United States to the commitments of the agreement under international law. This type of agreement is distinguished from both the *executive agreement*, requiring only presidential action, and the *treaty*, requiring a two-thirds vote of the Senate. Because reciprocal trade agreements typically result in tariff rate (revenue) changes, the House of Representatives is necessarily involved. For a more detailed legal discussion, see CRS Report 97-896, *Why Certain Trade*

(continued...)

At the heart of TPA/fast track are the expedited rules for moving trade implementing legislation through Congress, which have been used for nearly all reciprocal trade agreements.[15] Congress makes these expedited procedures available for a trade implementing bill provided the President uses the trade agreements authority granted him to the satisfaction of Congress, first by entering into agreements that meet TPA's overall and principal negotiating objectives, and second by satisfying the consultation requirements. In addition, under the "trade agreements authority," the President must:

1) at least calendar 90 days prior to signing the agreement, notify Congress of his intention to do so (to provide opportunity for revision before the agreement is signed, at which point it can no longer be changed);

2) within 60 calendar days of signing the agreement, provide Congress with a list of required changes to U.S. law needed for the United States to be in compliance with the agreement; and

3) on a day Congress is in session, send a copy of the final legal text of the trade agreement, a draft implementing bill, statement of administrative action proposed to implement the agreement, and supporting statements on how the agreement meets congressional objectives, changes existing agreements, and serves the purpose of U.S. commercial interests.

As an important caveat, these expedited procedures are extended only to implementing bills containing provisions that are "necessary or appropriate" to implement the trade agreements, either repealing or amending existing laws, or providing new statutory authority. This presumably limits the implementing bill to provisions related to the pending trade agreement, although the meaning of "necessary or appropriate" has been subject to debate.

Should these requirements be fulfilled to the satisfaction of Congress, it has agreed to follow certain expedited legislative procedures. In effect, these rules require that Congress *must* act on the bill, and in other ways represent a significant departure from ordinary legislative procedures. The rules are defined below (see **Appendix B** for greater detail):

1) mandatory introduction of the implementing bill in both Houses of Congress and immediate referral to the appropriate committees (House Ways and Means, Senate Finance, and possibly others);[16]

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[14] (...continued)
Agreements Are Approved as Congressional-Executive Agreements Rather Than as Treaties, by Jeanne J. Grimmett; and Shapiro, Hal S. *Fast Track: A Legal, Historical, and Political Analysis*. Ardsley, NY, Transnational Publishers. 2006. p. 22.

[15] The U.S.-Jordan FTA is the exception.

[16] This depends on whether there are provisions in the agreement that would change laws
(continued...)

2) automatic discharge from House and Senate Committees after a limited period of time (see **Appendix B**);

3) limited floor debate; and

4) no amendment, meaning that Congress must vote either up or down on the bill, which passes with a simple majority.

Congressional Procedures Outside TPA

In addition to the expedited rules procedures defined in TPA, Congress, with the effective consent of the Executive Branch, has followed certain procedures during the consideration of trade agreement implementing bills, that although not formally defined in TPA, have been integrated into the process of congressional approval of trade agreements. Three in particular stand out:

Side Agreements and Letters. Outside of formal TPA statutory requirements, Congress has insisted on additions or clarifications to trade agreements. This has resulted, at times, in side agreements and letters. Side agreements add to the agreement, such as the environment and labor side agreements of NAFTA.[17] Side letters serve as clarifying devices that can be used to attempt to assuage congressional concerns. Side agreements and letters accompany the agreement, but neither changes its text and both require official signatures of all the negotiating parties to come into force.

Mock Markups. Congress has insisted on reviewing the negotiated trade agreement prior to the implementing bill being introduced. This is done in an informal or "mock" markup, whereby hearings are held before the House Ways and Means and Senate Finance Committees on a draft of the final text of the agreement and an informal draft version of the implementing bill, which are sent over by the White House. This is, in effect, a test run of congressional response to the trade bill. Because it is only an informal draft bill, there is no real legislation to "mark up," but the hearings afford Committee Members an opportunity to comment on the draft trade agreement, as well as the informal draft implementing legislation, and offer amendments that serve as important signposts for changes to the implementing bill they would like to see made. Congress may also decide to hold a mock conference.

Although the agreement at this point has already been concluded, a clarification or "translation" of key points that do not alter the basic agreement can be made in the final implementing bill.[18] These accommodations, however, need not be done. Although many were made during consideration of the CAFTA-DR agreement, the

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[16] (...continued)
under the jurisdiction of other committees.

[17] Interestingly, while Congress authorized funding for U.S. contributions and for participation in the administrative bodies created by the NAFTA side agreements, it did not expressly approve the agreements themselves. See 19 U.S.C. sections 3471-3472.

[18] This idea is elaborated in: VanGrasster, Craig. Is the Fast Track Really Necessary? *Journal of World Trade*. Vol. 31, No. 2. April 1997. p. 106.

Bush Administration, by contrast, declined to include the language of an amendment unanimously supported by the Senate Finance Committee with respect to the U.S.-Oman FTA implementing legislation, citing TPA's own requirement that only legislation "necessary or appropriate" to implement the agreement be included. The Oman bill passed, but there arose a new bipartisan call for better consultation prior to the President entering into a trade agreement.[19]

Informal Agreements. Some Members of Congress have also relied on promises from the Administration to address issues raised in mock markups. These often relate to special interests and concerns, and their fulfillment relies on a measure of good will between Congress and the Administration. In the case of the CAFTA-DR implementing bill, for example, the Bush Administration made accommodations to sugar, textile, and labor interests to secure congressional support.[20]

Limiting Trade Agreements Authority

Congress adopted TPA rules on pragmatic grounds as self-limiting conditions to prevent trade implementing bills from being delayed or obstructed by congressional procedures that can either keep a bill from moving out of committee, or delay it on the floor of the House or Senate with extended debate. Trade agreements can also be the product of a fragile consensus between trade partners, and TPA procedures were designed to protect such a consensus from unraveling due to congressional amendments. In crafting TPA, however, Congress did not agree to surrender its constitutional authority over trade matters and wrote into TPA a number of provisions that can limit the use of the expedited procedures.

Sunset Provision. The expedited procedures in TPA are provided for a limited time, currently available for trade agreements that are entered into before July 1, 2007. Importantly, there is no deadline for submitting implementing legislation for an agreement that has been entered into before the July 1 deadline.

Extension Disapproval. TPA legislation requires that the President request an extension of the TPA authority after a certain period of time. The extension is granted unless a disapproval resolution is adopted in either House of Congress. Such a resolution of disapproval may not be considered unless it is reported out of either House Ways and Means or Senate Finance Committee. Although such resolutions have been reported out of committee in the past, none has been passed in either House of Congress. This process is a reminder to the Executive Branch that the availability of expedited legislative procedures is a congressional prerogative that can be denied if Congress becomes unhappy with how the President has conducted trade agreement negotiations.

Procedural Disapproval. The President must fulfill consultation and reporting requirements to give Congress the opportunity to influence the agreement before it is finalized. Should Congress determine that the President has failed to

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[19] Inside Trade. *Grassley Presses USTR To Improve Consultations on FTAs*. July 7, 2006.

[20] For details, see: CRS Report RL31870, *The Dominican Republic-Central America-United States Free Trade Agreement (CAFTA-DR)*, by J. F. Hornbeck.

meet these requirements, it may decide that the implementing bill is not eligible to be considered under TPA rules, which it can enforce if it adopts a joint "procedural disapproval" resolution in both Houses of Congress.

Withdrawal of Expedited Procedures. TPA, first and foremost, provides rules of procedure enacted by Congress, "with the full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of the House) at any time."[21] That is, Congress reserves its constitutional right to withdraw the fast track rule, which can take effect with a vote by either House of Congress.[22]

This summary suggests that in addition to binding rules, the long-term success of TPA rests on a cooperative spirit and partnership between the Legislative and Executive Branches of government, and by extension, between the two major political parties.[23] Many note that the sense of such cooperation has been absent under the current TPA, placing a strain on the trade legislative process in recent years. In fact, a bipartisan agreement on TPA has been absent since at least 1993, as evident in the eight-year lapse during the Clinton Administration and the highly partisan passage of the 2002 TPA renewal. The current dissatisfaction with TPA results from philosophical differences that have developed, in part, along partisan lines and raises the distinct possibility that TPA may lapse once again for an indeterminable period of time.

Issues for Congress

TPA is set to expire and, if it does, will be unavailable for trade agreements not entered into before July 1, 2007. Before TPA's scheduled expiration, a debate in the 110th Congress may be influenced by several sets of factors.

One set of factors reflects economic and trade policy concerns. Some Members of Congress have raised a concern over the role of globalization and trade liberalization in lost jobs and lower wages and in the growing income gap in the United States, issues that are the subject of debate among economists. Many Members have also expressed concern about the record-breaking trade deficits the United States continues to run and their possible impact on the U.S. economy.

Many Members have also called for greater enforcement by China and other trading partners of their obligations under trade agreements with the United States and for U.S. use of trade policy tools to encourage enforcement. In addition, some Members have argued that the United States needs to re-order its trade partner

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[21] Section 151(a)(2) of the Trade Act of 1974.

[22] See Shapiro, *Fast Track: A Legal, Historical, and Political Analysis,* p. 28.

[23] See Carrier, Michael A. All Aboard the Congressional Fast Track: From Trade to Beyond. *George Washington Journal of International Law and Economics*. Washington, DC. 1996.

priorities and forge closer economic ties with Japan, the European Union, and other large economies through FTAs or other mechanisms.

A second set of factors that would likely underlie a debate on the future of TPA is the political environment in Congress on trade. Recent votes on trade agreements have pointed to a political environment that is highly contentious and partisan, following a trend that began with the vote on the TPA in the Bipartisan Trade Promotion Act of 2002, if not earlier. Added to this trend is the unknown impact on trade policy of the change in the composition of the Congress as a result of the 2006 congressional elections.

The ensuing debate on TPA renewal, shaped by these and other factors, will likely focus on a number of specific issues. These issues point to concerns over the TPA process and particular trade policy issues that have yet to find a consensus resolution.

The Question of the Need for TPA

Given the many complexities with the TPA process, one recurring question is whether it is necessary at all? One way to explore this issue is to consider the alternatives. First, given the breadth and scope of modern trade accords, executive agreements are an insufficient means for fully implementing trade agreements where the amendment, repeal, or enactment of new laws is required. Second, the treaty approach presents two problems: the high hurdle of a two-thirds vote of approval in the U.S. Senate and lack of House approval for an agreement involving revenue.[24] Further, Congress has long considered U.S. trade agreements to be non-self-executing, that is, requiring implementing legislation if existing law is insufficient to carry out agreement obligations.[25]

Because legislative action involving both Houses of Congress is needed, the options appear limited to a TPA approach, or relying on ordinary rules of procedure to consider trade implementing legislation. To date, the complexity of representing the diverse interests of numerous economic stakeholders has several times led Congress back to the idea of using a carefully structured, time-limited grant of trade agreements authority, subject to implementing legislation being considered under streamlined legislative rules. Still, implementing legislation for some trade agreements, like the U.S.-Jordan FTA, have been approved without the use of TPA, demonstrating that under certain circumstances, TPA may be unnecessary for expeditious legislative action.

The Role of Congress

If the success of TPA were to be measured simply by the number of trade agreements that have been approved and implemented under its authority, then it may

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[24] See: Article 1, section 7, of the U.S. Constitution, which requires that all bills for raising revenue originate in the House.

[25] See: U.S. Congress. 103d Congress. 2d Session. House. *Uruguay Round Agreements Act.* (H.Rept. 103-826) October 3, 1994. p. 25.

be argued that TPA has proven its merit. Many Members of Congress, however, have complained that the TPA process has failed, demonstrating that binding congressional rules of procedure are not sufficient to guarantee a consensus position or a cooperative working arrangement on trade.[26] Such criticism is largely, but not exclusively, made along partisan lines.

Complaints point to multiple problems: 1) trade negotiation objectives that do not include all key concerns of Congress (e.g., enforceable labor standards) and are open to interpretation by the Executive Branch; 2) an Executive Branch consultation process, including the COG, denounced as superficial and unresponsive to congressional input; 3) the passage of widely unpopular FTAs negotiated under TPA authority; and 4) ineffective procedures for deterring the use of TPA (e.g., the extension disapproval resolution and repeal of fast track rules) because power is held closely through partisan control of committee chairs.[27] In short, there have already been calls for rekindling trust between the Administration and Congress, as well as ensuring greater bipartisan cooperation within Congress.

Trade Policy Issues

Many specific trade issues are likely to emerge in the course of congressional debate over TPA renewal. Given congressional debates over recent trade agreements, three issues stand out: labor standards; trade remedy laws; and the temporary entry of service providers or "mode-4."

Labor Standards. Perhaps the single most contentious specific trade issue in TPA renewal, particularly in the House, is the treatment of labor standards. They have been included as negotiating objectives in fast-track/TPA authority since the Omnibus Trade and Competitiveness Act of 1988. The partisan differences were evident in two competing bills offered during the 2001-2002 debate, and they are still reflected today.[28] H.R. 3009, introduced by House Ways and Means Committee Chairman Thomas, was eventually enacted as the Bipartisan Trade Promotion Authority Act of 2002. It established principal negotiating objectives for labor standards that include the following: to ensure that a party does not fail to effectively enforce its own labor laws; to recognize that parties retain the right to exercise discretion in the allocation of enforcement resources for those laws; to strengthen the capacity of U.S. trading partners to promote respect for core labor standards; and to ensure that labor protections do not arbitrarily or unjustifiably discriminate against U.S. exports or serve as disguised trade barriers.

H.R. 3019, as introduced by House Ways and Means Committee Ranking Member Rangel, would have gone further, requiring that each country's labor laws include ILO core labor standards that would be enforceable with sanctions, as are

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[26] Yerkey, Gary G. Renewal of TPA Seen as Highly Unlikely Next Year, Particularly if Democrats Triumph. *International Trade Reporter*. October 26, 2006. p. 1528.

[27] Reuters. *Bush's Trade Authority Renewal: Dead on Arrival?* October 19, 2006 and Vaughn, Martin, What If: Trade. *The Congressional Daily*. October 17, 2006.

[28] House and Senate Democrats Urge USTR to Renegotiate Labor Provisions in Peru FTA. *International Trade Daily*. November 22, 2006.

commercial disputes, under a trade agreement. The possible use of sanctions to enforce a trade agreement party's adherence to mandatory labor standards has been the core difference to be resolved. Some Members contend that labor standards are an important human rights consideration and also a policy to ensure that U.S. workers do not have to compete against low cost products made by mistreated workers. Others view labor standards as an issue that can be misused for protectionist purposes and, in any case, should be covered in fora other than trade agreements.

Trade Remedy Laws. Another principal negotiating objective in the 2002 TPA that is of considerable interest to Congress requires trade agreements:

> ... to preserve the ability of the United States to enforce rigorously its trade laws, including the antidumping, countervailing duty, and safeguard laws, and avoid agreements that lessen the effectiveness of domestic and international disciplines on unfair trade ...

A rather strong bipartisan consensus supports this principle. It can be understood by the institutional predilection Congress has toward safeguarding the interests of constituents.[29] Despite such a clear congressional message, the Bush Administration included a discussion of trade remedy laws in the Doha Development Agenda, arguing that it was necessary in order to get developing countries to launch the negotiations. Many Members of Congress criticized this step. Individual U.S. trading partners have also demanded that trade remedy laws be part of U.S. FTA negotiations, most recently with South Korea.

Temporary Entry of Service Providers ("Mode 4"). The temporary movement of service providers (to the home country of the buyer of the services), known in the WTO as "mode-4," has been a contentious issue in various trade negotiations. It has been a major issue in the Doha Development Agenda negotiations on services. Several developing countries, especially India, have criticized the United States for not providing greater latitude in the temporary movement of professional services providers to the United States.

Mode-4 is also an issue of congressional jurisdiction. In July 2003, during congressional consideration of the implementing bills for the U.S.-Chile and U.S.-Singapore free trade agreements, some Members of the House and Senate Judiciary Committees objected to the inclusion of changes in U.S. visa policies to allow increases in the quotas of workers entering the United States. They argued that changes in visa rules must be separate from trade legislation that is considered by Congress under expedited (fast-track) procedures. Compromises were reached to allow the two bills to be voted on, but not without bipartisan warnings from both Committees that changes in visa policy should no longer be part of bilateral or multilateral trade agreements.[30]

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[29] Pastor, *Congress and the Politics of U.S. Foreign Economic Policy 1929-1976*, pp. 56-58.

[30] For more information on immigration issues and trade agreements, see CRS Report RL32982, *Immigration Issues in Trade Agreements*, by Ruth Ellen Wasem.

Options for Congress

As the expiration date for the current TPA approaches, Congress may be considering a number of options; four that span the spectrum are discussed below.

Allow TPA to Expire

Should Congress not agree to extend or renew TPA, it may allow the authority to expire. Many sector-specific and other narrowly targeted agreements have been concluded in the past without TPA. Negotiations have also been launched prior to having TPA authority in place, suggesting that the conduct of U.S. trade negotiations can continue in some form without TPA. Others assert, however, that the absence of TPA may seriously constrain some U.S. trade negotiations, particularly those involving reciprocal bilateral, regional, and multilateral trade agreements. Trading partners may be reluctant to negotiate with the United States without TPA given that an agreement would be subject to ordinary legislative procedures and amendment by Congress. Therefore, one issue that Congress faces is whether there are compelling agreements outstanding that may warrant consideration of TPA extension or renewal.

Extend TPA Temporarily

Under this option Congress would extend the current TPA with few if any revisions long enough to allow the United States to complete specific negotiations. This approach might be favored by those who are reluctant to renew the authority but do not want to hinder the completion of any agreements that they view potentially beneficial to the United States. This option was adopted in 1993 when the negotiating authority was due to expire before the completion of the Uruguay Round agreements. Congress extended the authority for 10 months and only for the Uruguay Round negotiations.[31] A possible consequence of this approach might be the adverse impact on negotiations that are not covered by the temporary TPA extension, with trading partners interpreting the move as lack of U.S. support for those negotiations.

Renew TPA Authority

Under this option, Congress could grant the President new authority with or without major changes in its structure, and without restricting it to specific agreement negotiations. This approach would give more time to complete pending trade negotiations and allow for the opportunity to launch new negotiations. In so doing, this option would provide the President with the flexibility to implement a complex trade negotiating agenda. This approach would imply, however, that a political consensus exists among most Members of Congress and between Congress and the President on trade objectives and strategy.

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[31] Some have argued that the circumstances at that time were different from what they are now because the trade authority had more support in Congress.

Grant Permanent TPA Authority

Some trade policy experts have suggested that Congress grant the President a form of permanent fast-track/TPA.[32] The proponents of this option envision a two-tier procedure: (1) Congress would enact into law permanent fast track procedures; and (2) before specific negotiations can begin, both Houses of Congress would have to pass a resolution approving the negotiations and objectives designed for the specific set of negotiations.

Supporters argue that the permanent authority would signal to trading partners that the United States is committed to trade liberalization over the long term. The prior approval procedure for specific negotiations would avoid the concern of some Members of Congress of giving the President a "blank check" to negotiate FTAs with any country he chooses. One criticism of this approach is that Congress might not be willing to give "permanent" authority even with the required pre-approval process.

Prospects for TPA Renewal

When the 110th Congress convenes in January 2007, one issue that it will face early is the expiration of TPA. Congress has multiple options including: no action, temporary and/or limited extension, multi-year renewal, permanent authority, or some hybrid solution. The TPA decision will have significant implications for the shape and conduct of U.S. trade policy in the near term, as well as how the congressional-executive relationship may be redefined for the rest of the Bush Administration. The outlook is far from clear, however, given the controversy that surrounds TPA and the numerous factors that may influence Congress's decision of how or even whether to act.

First, for TPA support to grow, at a minimum, there must be a clear and compelling trade agenda. The fate of both the Doha round and major bilateral trade negotiations such as those with South Korea, Malaysia, and Panama, will be key indicators. If they are not concluded by the time TPA expires, Congress could extend a limited TPA if there is some promise that they can be concluded in the near term. In the absence of such promise, congressional interest in TPA extension may dissipate.

Second, the political will to find a compromise over TPA extension would have to emerge. President Bush faces the decision of whether trade is of sufficient importance for the final two years of his term to request, lobby, and make the necessary tradeoffs to obtain TPA extension or renewal. In the past, this has included consideration of trade adjustment assistance (TAA) programs and may be expanded to non-trade issues such as health care, among others. Stakeholders in favor of TPA would also have to be involved, including big business, agriculture exporters, and consumers. They likely face a formidable challenge from those who have opposed

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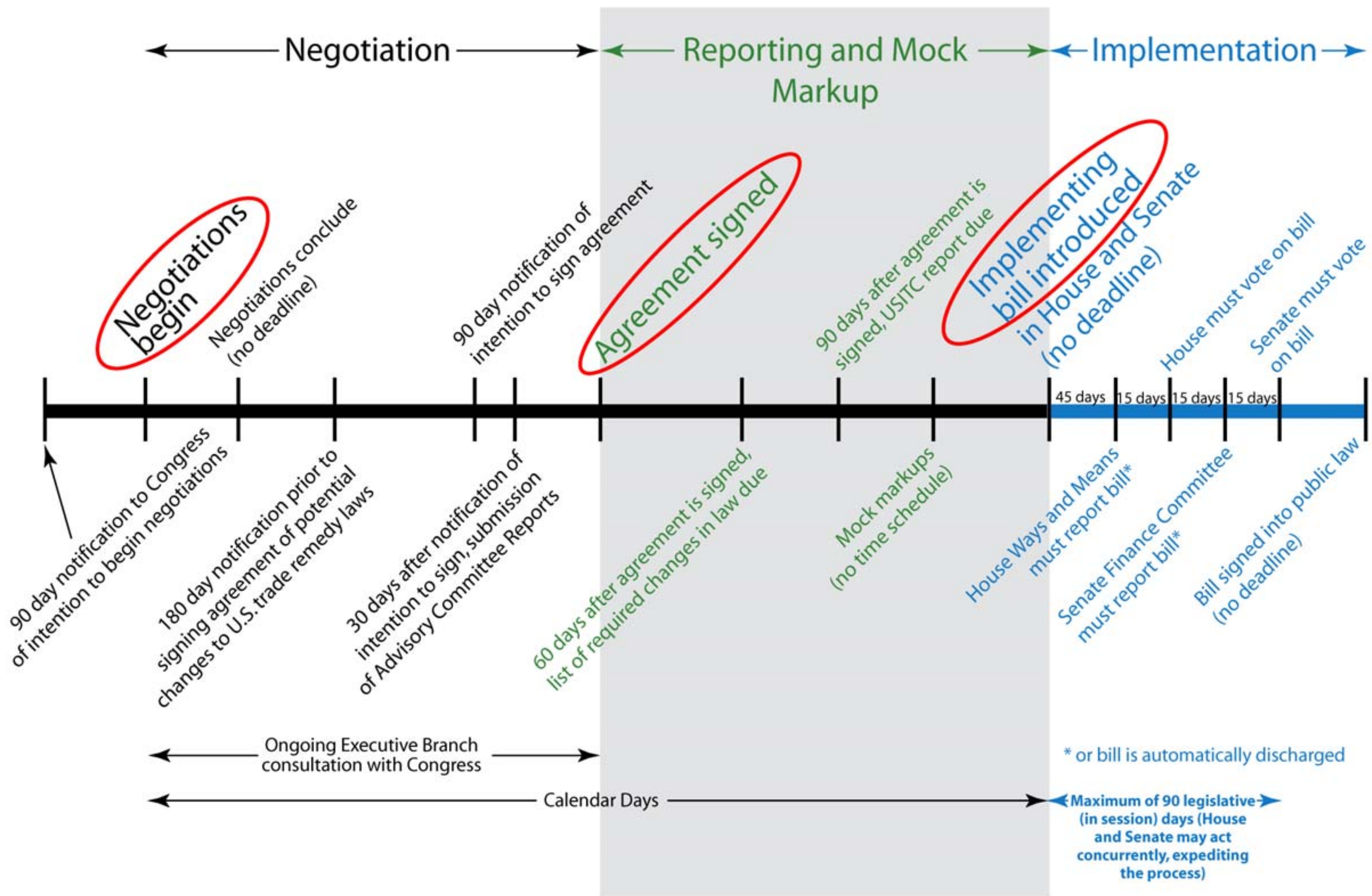
[32] See for example, Destler, I. M. *Renewing Fast-Track Legislation.* Institute for International Economics. Washington. September 1997. pp. 41-43, and Mastel, Greg and Hal Shapiro. Fast Track Forever? *The International Economy.* Summer 2006. pp. 54-55.

TPA, including labor unions, environmental groups, import-sensitive industries, and non-exporting agriculture producers. TPA may also become tied up in other legislative issues and tradeoffs, such as the extension of the Farm Bill, which could further complicate renewal efforts. Congress faces the determination of whether there is a solution that can garner sufficiently broad support.

Third, the many new members and leadership positions in the 110th Congress indicates that a true bipartisan approach to TPA would be required if there is to be sufficient support for its extension, much less renewal. This is a factor that only Congress can decide and it is not yet clear how this will play out.

Appendix A: Timeline for Negotiation, Congressional Consultation, and Legislative Implementation of Trade Agreements Under TPA



Appendix B: A Short Guide to the Expedited Legislative Procedures for Passage of Trade Implementing Bills Under TPA[33]

I. Before the formal TPA expedited procedures come into play, the House Ways and Means and Senate Finance Committees typically hold "mock markups" on informal drafts of the implementing legislation, voting to approve or disapprove. The vote and any amendments to the draft legislation, however, are non-binding on the Administration. These hearings provide the last opportunity to make recommendations to the Administration before it sends final implementing legislation to Congress, initiating the expedited rules procedures.

II. The President sends a final legal draft text of the trade agreement and a draft implementing bill (with supporting materials) to Congress. Identical bills are subject to mandatory introduction in each House of Congress the day received. The bills may, or may not, reflect some or all of any non-binding amendments passed by committees in the mock markup.

III. The bills are jointly referred to the "appropriate committees": House Ways and Means, Senate Finance, and others if jurisdiction warrants.[34]

IV. Each committee has 45 legislative (in session) days to report the bill or it is automatically discharged and placed on the appropriate calendar.[35] Under the U.S. Constitution, as a revenue bill, the Senate must pass the House bill, in which case to report the bill, the Senate Finance Committee would have the longer of either 45 legislative days from the time the bill was introduced in the Senate, or 15 days from the time the bill was sent over from the House.[36]

V. Each house has 15 days to complete floor action from the time the committees report, after which any member may request a vote. The implementing bill is privileged so:

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[33] Title XXI of the Trade Act of 2002 (P.L. 107-210) and section 151 of the Trade Act of 1974, as amended. A detailed summary, including committee consideration and floor procedures, may be found in CRS Report RL32011, *Trade Agreements: Procedure for Congressional Approval and Implementation*, by Vladimir N. Pregelj.

[34] For example, the U.S.-Chile Free Trade Agreement implementing bill contained a provision affecting immigration law, requiring the bill to be referred to the House and Senate Judiciary Committees.

[35] Cumulatively, the whole process can take as long as 90 legislative days, potentially lasting many months.

[36] In fact, the Senate can and has acted before the House. In the case of the Chile FTA implementing bill, the Senate Finance Committee reported out first. When the House bill came over, it was held at the desk and put on the Senate calendar directly, given it was identical to the Senate version. For the CAFTA-DR bill, the whole Senate actually voted first, necessitating a second (procedural) vote to substitute the language of the later-passed House bill for the Senate-passed bill.

- consideration is limited to 20 hours of debate evenly divided between those for and against, and

- it cannot be amended, and a motion to suspend the no-amendment rule or request to suspend it by unanimous consent, is not in order.

VI. A bill passes by simple majority. Because the House and Senate bills are identical, no conference is needed so the final votes clear the measure to be presented to the President. Once the implementing bill is signed, under its terms, the agreement enters into force for the United States by Presidential proclamation.