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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 known as fast track), expired. TPA is the authority Congress grants to the President to enter into certain free trade agreements (FTAs), and to have their implementing bills considered under expedited legislative procedures, provided he observes certain statutory obligations in negotiating them. TPA allows Congress to exercise its constitutional authority over trade, while giving the President added leverage to exercise his authority to negotiate trade agreements by effectively assuring U.S. trade partners that final agreements are given swift and unamended consideration.

TPA reflects years of debate, cooperation, and compromise between Congress and the Executive Branch in finding a pragmatic accommodation to the exercise of each branch's respective authorities. The core provisions of the fast track legislative procedures have remained unchanged since first enacted in 1974, 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 real and perceived negative effects of trade, and as the trade debate became more partisan in nature, culminating in a largely party-line vote on the 2002 renewal. The current renewal debate is centered on the broad effects of trade on the United States, with an emphasis on numerous specific issues that may be given greater weight in the future: labor, environment, and public health provisions; stricter enforcement of trade agreements; enhanced trade adjustment assistance programs; and revisions to the role of Congress in trade policy making.

Bilateral agreements with Panama, Peru, Colombia, and South Korea were signed in time to be considered under the 2002 TPA. The protracted WTO Doha Round of multilateral negotiations is still incomplete and may yet be the remaining key trade agreement that could compel Congress to consider extending or renewing TPA. Some observers also suggest that TPA is important to support future bilateral FTA negotiations, particularly given that many countries appear ready to continue pursuing FTAs irrespective of U.S. trade policy. Key Members of the House and Senate, however, have signaled that TPA renewal is not at the top of the legislative agenda and will require considerable deliberation before it can be passed. Congress has many options in dealing with TPA: take no action; extend temporarily; revise and renew; grant permanent authority; or devise some hybrid solution. How this issue plays out depends on a host of political and economic variables. This report will be updated as events warrant.

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On July 1, 2007, Trade Promotion Authority (TPA — formerly known as fast track) expired, and with it the authority that Congress grants to the President to enter into certain trade agreements, and to have the legislation needed to implement them considered under expedited legislative procedures. Although the President has the authority under the Constitution to negotiate free trade agreements (FTAs), typically implementing legislation and thus congressional action is required to bring them into force. The United States Trade Representative (USTR) completed four bilateral trade agreement negotiations prior to the TPA expiration, but the Doha Round and any future bilateral FTAs cannot be considered under TPA's expedited procedures unless it is renewed by Congress.

For over 30 years, Congress has granted the President TPA/fast track, agreeing to consider trade implementing legislation expeditiously and vote on it without amendment, provided the President meets certain statutory negotiating objectives and consultation requirements. TPA strikes a delicate balance by allowing Congress to exercise its constitutional authority over trade, while giving the President additional negotiating leverage by effectively assuring trade partners that a final agreement will be given swift and unamended consideration by Congress. Earlier incarnations of TPA, although controversial, were adopted with substantial bipartisan majorities. Over time, however, trade negotiations have become more complex, Congress has insisted on tighter oversight and consultation requirements, and the trade debate has become more partisan in nature, making congressional renewal of TPA, if anything, even more controversial.

The assumption of control in the 110th Congress by Democrats may also affect prospects for TPA renewal by shifting trade policy priorities, as seen in the "New Trade Policy for America," a bipartisan position crafted jointly by congressional leadership and the Bush Administration.[1] The "New Trade Policy" incorporates important proposed changes to FTAs, some with broad social implications. Although presented as an framework, it already has taken detailed and concrete form in the language of recently signed FTAs with Panama and Peru. Among important changes from previous FTAs, signatories must now: adopt as fully enforceable commitments the five basic labor rights defined in the United Nations International Labor Organization's (ILO) *Fundamental Principles and Rights at Work and its Follow-up (1998) Declaration*; adhere to numerous multilateral environmental agreements (MEAs); and accept pharmaceutical intellectual property rights (IPR) provisions that could hasten a developing country's access to generic drugs.

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[1] Released March 27, 2007 and available on the websites of the House Ways and Means Committee and the United States Trade Representative (USTR).

The expiration of TPA raises the central question of whether, when and in what form TPA should be renewed, including to what degree if any, provisions of the "New Trade Policy America" might be incorporated. Some have argued that TPA should be renewed to cover, at a minimum, a Doha Development Round (DDA) multilateral agreement, if it can be concluded, and perhaps also potential future bilateral FTAs. The DDA negotiations, however, are bogged down and pending FTA negotiations appear dormant. In addition, the House Democratic Leadership has signaled that TPA is not at the top of its legislative agenda, indicating that a quick resolution to the TPA debate seems unlikely to occur.

This report presents background on the development of TPA, a summary of the major provisions under the recently expired authority, and a discussion of the issues that have arisen in the debate over TPA renewal. It also explores the policy options available to Congress and will be updated as the congressional debate unfolds.

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.[2] 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 primary source of federal revenue. Early congressional trade debates pitted Members from northern manufacturing regions, who benefitted from protectionist tariffs, against those from largely southern raw

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

material exporting regions, who lobbied for 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. These treaties provided most-favored-nation (MFN) treatment to the goods of the parties to those treaties with United States; 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.[3]

Two legislative events occurred in the 1930s that radically changed the shape and conduct of U.S. trade policy. 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 pre-approved levels. The tariffs were applied on an MFN basis. 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.[4]

- 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.

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[3] 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.

[4] 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.

Congress renewed presidential reciprocal trade authority eleven times until 1962 through trade agreement extension acts. General tariff levels declined and their significance as a trade barrier lessened.[5] 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.[6]

Under the Trade Expansion Act of 1962, Congress granted the President authority for five years to negotiate the reduction or elimination of tariffs and expanded its role in the process by requiring the President to submit for congressional review a copy of each 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 trade 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 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.[7] 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 the fast track authority for trade agreements.[8]

The Creation of Fast Track Trade Authority

The results of the Kennedy Round made evident that non-tariff barriers would increasingly dominate the agenda of future multilateral trade agreements, and would require 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.

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

[6] 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.

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

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

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 required changes in U.S. law beyond tariff modifications, 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.[9]

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 for trade agreements 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.

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[9] U.S. Congress. Senate. Committee on Finance. *Trade Reform Act of 1974; report...on H.R. 10710...*(S.Rept. 93-1298) November 26, 1974. U.S. Govt. Print. Off., 1974. p. 107. Cited in CRS Report 97-41, *Fast-Track Implementation of Trade Agreements: History, Procedure, and Other Options*, by Vladimir N. Pregelj.

Subsequent Renewals of Fast Track Trade Authority

The core provisions of the fast track procedures have remained virtually unchanged since they were first enacted. (The next section of this report examines fast track procedures and the trade agreements authority in more detail.) These provisions 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. The initial grant of trade "negotiating" authority and the authority to enact tariff modifications by proclamation under the Trade Act of 1974 were in effect for five years ending on January 2, 1980. A residual presidential authority to proclaim 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 enter into agreements on non-tariff barriers but made no 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 under consideration. 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 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 denial of fast track consideration if either Committee disapproved of the negotiation within 60 days after receiving the notification. 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. 103-182).

However, negotiations under the Uruguay Round of the GATT were not going to finish in time to meet the June 1, 1993 expiration 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 hiatus since fast track was initially approved in 1974. In 1997, both the Senate Finance and the 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, although both the Republican congressional leadership and the Clinton Administration wanted fast track authority, the two sides could not agree on how labor and environmental issues should be addressed in trade agreements negotiated under renewed 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 a renewal of fast track authority, which was renamed in the legislation "trade promotion authority (TPA)," in part to counter a negative connotation associated with the fast track name. The renewed authority is contained in the Bipartisan Trade Promotion Authority Act (BTPAA) of 2002, which was enacted as Title XXI of The Trade Act of 2002 (P.L. 107-210).

The structure of TPA is consistent with previous negotiating authority. It includes environmental and labor provisions as "principal negotiating objectives," but does not mandate the inclusion of minimal enforceable labor standards in trade agreements.[10] 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 consultation, the Congressional Oversight Group (COG), to operate in addition to the congressional trade advisors that have been appointed under previous versions. (A more detailed discussion of the notification and consultation requirements appears in the next section.)

The original House version of the BTPAA (H.R. 3005) passed by one vote (215-214), largely along party lines, with Republicans mostly supporting the bill and Democrats largely opposing it. The legislation was combined in the Senate with the

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[10] 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.

renewal of Trade Adjustment Assistance (TAA), the Andean Trade Preference Act (ATPA), and the Generalized System of Preferences (GSP). It passed 66 to 30. The conference report on the final bill, H.R. 3009, the Trade Act of 2002, was adopted by the House (215-212) and Senate (64-34).[11]

Under the 2002 version of TPA, Congress approved implementing legislation for FTAs with Chile, Singapore, Australia, Morocco, the Dominican Republic, the Central American countries (except Costa Rica), Bahrain, and Oman. In addition, the United States signed FTAs with Colombia, Peru, Panama, and South Korea just before TPA expired on July 1, 2007. The United States is also interested in FTA negotiations with Malaysia, Thailand, the United Arab Emirates, and the members of the South African Customs Union (SACU), which are currently suspended and would have to be taken up under some future TPA authority for legislation to considered under expedited procedures.

The United States and more than 140 other members of the World Trade Organization (WTO) are also engaged the Doha Development Agenda (DDA), a protracted round of multilateral negotiations set to revise and expand rules for conducting trade in agriculture, manufactured goods, and services, with an emphasis on meeting the needs of developing countries.[12] Although many argue that TPA is necessary for the U.S. bargaining position to remain credible, others note that TPA is not required to complete the negotiations (as the example of the Uruguay Round discussed above suggests). Should a breakthrough be made on an agreement that the U.S. Congress would approve, Congress could extend TPA exclusively for the Doha Round at any time. Most observers acknowledge, nonetheless, that the Doha Round probably makes the most compelling argument for TPA extension at this time.

The Elements of TPA

Through TPA, in its various iterations, Congress has sought to achieve four major goals in the context of supporting trade negotiations: (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.

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[11] 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.

[12] For more information on current U.S. trade negotiations, see CRS Report RL33463, *Trade Negotiations During the 110th Congress*, by Ian F. Fergusson.

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. For this reason, trade negotiating objectives stand at the center of the congressional debate on TPA.

Congress establishes 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 enhancing U.S. and global economies. Principal objectives are far more specific and provide detailed goals that Congress expects to be integrated into trade agreements, such as reducing barriers to various types of trade (e.g., goods, services, agriculture, electronic commerce); protecting foreign investment and intellectual property rights; encouraging transparency, fair regulatory practices, and anti-corruption; ensuring that 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.

In the past, 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.[13] This controversy reflects the importance of TPA negotiating objectives as a template for future trade agreements negotiated under these guidelines. For example, if 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, which are emphasized repeatedly in all three groups of negotiating objectives, provide the best illustration. In particular, the decision not to include minimal enforceable standards anywhere in TPA 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 opponents, the vote on TPA/fast track renewal is among the most critical trade votes Congress takes. It is,

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[13] 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.

in no small part, for this reason that key Members of the 110th Congress have indicated a preference for proceeding carefully, if not slowly, in pursuing a renewed 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 trade negotiation delegations. Notification and consultation requirements have been expanded in each renewal of authority. Most of these requirements are found in their own section within the TPA statute. The timing of these notifications is detailed in the time line presented in **Appendix A**. First, the President must conduct certain notifications and 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 notifications and consultations **before (and after) agreements are entered into (signed)**, to include:

1) notifying Congress in writing of his intention to enter into an agreement at least 90 calendar days prior to doing so;

2) 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;

3) 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;

4) submitting private sector advisory committee reports to Congress, the President, and the USTR no later than 30 calendar days after notifying Congress of his intention to enter into an agreement;[14]

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[14] 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*.
(continued...)

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

6) 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 discussed 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 with passage implementing legislation.[15]

At the heart of what is now called TPA are the expedited rules for moving such trade implementing legislation through Congress, which have been used for nearly all reciprocal trade agreements.[16] Importantly, the fast track procedures are rules of the House and Senate. Either House may change them at any time with a majority vote. Congress makes these expedited procedures available for a trade implementing bill provided the President uses the trade agreements authority granted to 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 notification and consultation requirements. In addition, under the "trade agreements authority" section, Congress requires that the President:

1) as mentioned above, at least calendar 90 days prior to signing the agreement, notify Congress of his intention to do so (to provide opportunity for congressional input before the

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[14] (...continued)
Washington, DC. March 2006. pp. 252-255.

[15] 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 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.

[16] The U.S.-Jordan free trade agreement is the exception.

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, the TPA expedited procedures are extended only to implementing bills with provisions limited to those "necessary or appropriate" to implement the trade agreements, either repealing or amending existing laws, or providing new statutory authority. This requirement 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) and involve:

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);[17]

2) automatic discharge from House and Senate Committees after a limited period of time;

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 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:

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[17] Additional referrals depend on whether there are provisions in the agreement that require changes in law under the jurisdiction of other committees.

Side Agreements and Letters. Outside of formal TPA statutory requirements, Congress has insisted on additions or clarifications to trade agreements. This insistence has resulted, at times, in side agreements and letters. Side agreements are additional obligations accepted by all parties after the original trade agreement has been signed. The most notable examples are the environment and labor side agreements of NAFTA.[18] Side letters serve as clarifying devices usually applied to a very specific issue and that can be used to assuage a particular congressional concern. Side letters are typically addressed from and to the top trade negotiating representative (e.g. the USTR, trade minister, or equivalent.) 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.

Hearings and Mock Markups. Congress has insisted on reviewing the negotiated trade agreement prior to the implementing bill being introduced. This is done first in hearings before the House Ways and Means, and Senate Finance Committees, as well as possibly other interested committees. The Ways and Means, and Finance Committees typically follow with an informal or "mock" markup on an informal draft version of the implementing bill, which is sent over by the White House along with a draft of the final text of the trade agreement.

The informal mockup 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 meetings 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 signals to the Administration of changes to the implementing bill they would like to see made. The two revenue committees may also decide to hold a mock conference to reconcile any differences in their mock markups.

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.[19] The Administration, however, can exercise discretion in accepting suggested changes from Congress. For example, while the committees offered many changes to the CAFTA-DR agreement that the Bush Administration tried to accommodate, it 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 a new bipartisan call for better consultation prior to the President entering into a trade agreement arose because of dissatisfaction with both the Oman FTA and the TPA process.[20]

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[18] 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.

[19] 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.

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

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.[21]

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 that would change the basic agreement. 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. Each renewal of the trade agreements authority has provided the use of expedited procedures for trade agreement implementing bills for a limited time. The 2002 statute made these procedures available for trade agreements entered into before July 1, 2007. Importantly, however, the act provides no deadline for submitting implementing legislation for the agreement if it is 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 either House of Congress adopts a disapproval resolution. Such a resolution of disapproval may not be considered unless it is reported out of either the 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 requirement that the President fulfill consultation and reporting obligations also helps preserve the congressional role on trade agreements by giving Congress the opportunity to influence the agreement before it is finalized. Should Congress determine that the President has failed to meet these requirements, it may decide that the implementing bill is not eligible to be considered under TPA rules. It would implement this decision by adopting a joint "procedural disapproval" resolution in both Houses of Congress.

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

Withdrawal of Expedited Procedures. The Trade Act of 1974, as amended, provides that the expedited procedures for consideration of trade implementing bills are enacted as rules of procedures for each House, "with the full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time."[22] That is, Congress reserves its constitutional right to withdraw or override the fast track rule, which can take effect with a vote by either House of Congress.[23]

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.[24] 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, now lapsed once again, may not be renewed.

Issues for Congress

TPA expired on July 1, 2007, and is currently not available for the potentially most important trade agreement still under negotiation, the multilateral Doha Development Round, as well as any future bilateral FTAs. President Bush formally requested TPA renewal on January 31, 2007, and the congressional response has ranged from immediate support to deferred consideration of approval and outright opposition. Currently, the Democratic Leadership has signaled that TPA renewal is not a priority for the immediate legislative agenda.[25] Reluctance to take up TPA renewal rests with a number of concerns.

First, increasingly Congress is focused on addressing the negative effects of trade policy and, more broadly, "globalization." Job displacement, falling wages, the growing income gap in the United States (and developing countries), and the U.S. trade deficit all reinforce an overall sense that the costs and benefits of trade are not being distributed equally and that legislative policy responses in this area should be paramount. Congress has responded by insisting on significant changes to bilateral

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[22] Section 151(a)(2) of the Trade Act of 1974 (P.L. 93-618).

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

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

[25] Brevetti, Rossella and Gary G. Yerkey. President Bush Calls on Congress to Renew Trade Promotion Authority. *International Trade Reporter*. February 1, 2007. p. 159 and Brevetti, Rossella. USTR, Paulson, Gutierrez Urge Renewing TPA, But Pelosi Says It Is Not a Legislative Priority. *International Trade Reporter*. July 5, 2007.

FTAs and introducing new trade adjustment assistance bills. Importantly, each of the issues mentioned above has causes (and potential policy responses) rooted as much or more in domestic as international economic policies, complicating if not confusing both the social equity and the trade policy debates.

Second, many Members are also displeased with the perceived inadequate enforcement of trade obligations undertaken by China and other U.S. trade partners. It has been further suggested that the United States reprioritize the list of potential bilateral FTA countries, with perhaps a new emphasis on Japan, the European Union, and other large economies. Insisting on linking revised trade priorities to TPA renewal may be another way for Congress to exercise its authority over trade policy.

Third, the Democratic leadership has indicated that TPA renewal will require lengthy deliberations to craft a new model for future U.S. trade policy, one likely to incorporate the key provisions of the "New Trade Policy of America," among others. There is no perceived need to rush consideration of such a complex issue at this time, particularly given the slow pace at which the Doha Round is progressing. The continuing debate on TPA renewal, shaped by these and other factors, may focus on a number of specific issues, reflecting unresolved concerns over the TPA process in general and trade policy issues of particular interest to Congress.

The Need for TPA

A recurring question is whether TPA is really necessary. One way to explore this issue is to consider the alternatives. First, given the breadth and scope of modern trade accords, executive agreements are generally 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 action for an agreement involving revenue.[26] 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.[27]

Because legislative action involving both Houses of Congress is needed, the options appear limited to either a TPA approach, or relying on ordinary rules of procedure to consider trade implementing legislation. To date, the challenge 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, despite the fact that a strategically important, but commercially insignificant FTA with Jordan was approved without TPA. Some of the debate over the "need" for renewal may hinge on how important Congress perceives it is for the United States to continue trade negotiations in a world that will continue to integrate irrespective of U.S. policy.

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

[27] See U.S. Congress. 103rd Cong., 2nd sess., House, *Uruguay Round Agreements Act.* (H.Rept. 103-826) October 3, 1994. p. 25.

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 might be argued that TPA has proven its merit. Many Members of Congress, however, have complained that in recent years 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.[28] 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) ineffectiveness of procedures for deterring the use of TPA (e.g., the extension disapproval resolution and repeal of fast track rules) because power has at times been held closely through partisan control of committee chairs.[29] In short, there has been a growing sense for the need to rekindle trust between the Administration and Congress, as well as ensuring greater bipartisan cooperation within Congress on trade matters.

Trade Policy Issues

Many specific trade issues are likely to emerge in the course of congressional debate over TPA renewal. The current congressional debate and those over recent trade agreements point to numerous issues: labor, environment, and public health standards; trade adjustment assistance; trade remedy laws; and the temporary entry of service providers known as "Mode-4."

Labor Standards. Perhaps the single most contentious specific trade issue for TPA renewal, particularly in the House, has been 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 2002 renewal, and they are still reflected today.[30] H.R. 3009, introduced by then-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 enforce effectively 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

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

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

[30] Brevetti, Rossella. Rep. Rangel to Seek Bipartisan Plan To Renew Trade Promotion Authority. *International Trade Daily*. February 1, 2007. p. 158.

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 then-House Ways and Means Committee Ranking Member Rangel (now Chairman), would have gone further, requiring that each country's labor laws include ILO core labor standards that would be enforceable with trade sanctions, equal to those applied to commercial and other disputes under a trade agreement. Replacing the "does not fail to effectively enforce its own laws" language with mandatory adherence to ILO core labor standards has been a major difference to be resolved. Enforcing such adherence through trade sanctions is a second major difference. Congressional leaders and the Bush Administration have attempted to bridge these differences through the mandatory framework included in the "New Trade Policy for America." The first legislative test of the this compromise language will likely be congressional implementing legislation for the proposed bilateral FTAs with Peru and Panama. They contain language reflecting the key elements of the compromise framework. The next question is whether such language might be incorporated into a new TPA.

Environment and Public Health. The "New Trade Policy for America" also provided the basis for key changes to environment and public health commitments in bilateral FTAs that may also be germane to a new TPA. It calls for signatory countries to U.S. FTAs to adopt and enforce multiple multilateral environmental agreements (MEAs) in support of international policies designed to address global warming and other hazards. Changes to patent and data exclusivity provisions in intellectual property rights chapters hold out the promise for developing countries that sign an FTA with the United States to have potentially quicker access to generic medicines.

Trade Adjustment Assistance. A major congressional response to those who do not benefit from trade liberalization is trade adjustment assistance (TAA). In the past, the program has focused primarily on workers and has been funded and administered through the U.S. Department of Labor. Other programs also exist, including a small one for firms administered by the U.S. Department of Commerce. Because the effects of "globalization" and particularly trade liberalization, both positive and negative, can be far reaching, there is a growing interest in developing more comprehensive and effective alternatives to TAA programs, which Congress has not conceptually changed since created in the Trade Expansion Act of 1962 (P.L.87-794). This concept might include expanding the program to the services sector or other groups negatively affected by "globalization," and has been identified as a key legislative initiative in the "New Trade Policy for America."

Trade Remedy Laws. Congress has repeatedly expressed a bipartisan interest in ensuring that trade negotiations do not hinder or restrain the use of U.S. trade remedy laws. Specifically, in the previous TPA, Congress required 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 ...

It can be understood in light of the institutional responsibility Congress has had toward safeguarding the interests of constituents.[31] Despite such a clear message from Congress, the Bush Administration included trade remedy laws as part of the Doha Round, arguing that doing so was necessary to get developing countries to join the negotiations. Many Members of Congress subsequently criticized this step. Individual U.S. trading partners have also demanded that trade remedy laws be part of U.S. bilateral FTA negotiations, most recently with South Korea, although this has not happened.

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, particularly the Doha Round 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.[32]

Options for Congress

With the expiration of TPA on July 1, 2007, Congress has a number of options with respect to its possible renewal. Four that span the spectrum are discussed below.

No TPA Renewal

Congress at present does not appear ready to extend or renew TPA. Although the lack of TPA may delay action on future reciprocal trade agreements, many sector-specific and other more narrowly targeted agreements have been concluded in the past without TPA, and the United States has also launched negotiations prior to

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

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

having TPA authority in place. Both situations suggest that the conduct of U.S. trade negotiations can continue in some form without TPA. Still, trade partners may be reluctant to negotiate with the United States without TPA since the agreement would be subject to ordinary legislative procedures and amendment by Congress. Therefore, one question that Congress faces is whether there are potential trade agreements outstanding that may compel consideration of TPA extension or renewal.

Extend TPA Temporarily

Congress could extend the current TPA with few or no revisions long enough to allow the United States to complete a specific agreement. This approach might be favored by those who are reluctant to renew the authority, but do not want to hinder the completion of agreements that they view as potentially beneficial to the United States. For example, Congress extended the authority for 10 months in 1993 to complete the Uruguay Round agreements, and could do so again for the Doha Round.[33] In as much as labor and environment provisions are not being contemplated as part of the Doha negotiations, Congress could extend TPA for the sole purpose of concluding the multilateral agreement, perhaps without compromising the concerns of those Members who support stronger labor, environment, public health, and other provisions in bilateral FTAs.

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. Such an 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. Congressional action on this approach implies, however, that a political agreement could be struck on the overall framework of trade agreements objectives and negotiating priorities among a majority in Congress, and between Congress and the President.

Grant Permanent TPA Authority

Some trade policy experts have suggested that Congress could grant the President a form of permanent fast track/TPA.[34] 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. Step (2) is designed to satisfy those who might be concerned that Congress could be surrendering its authority permanently.

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[33] 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.

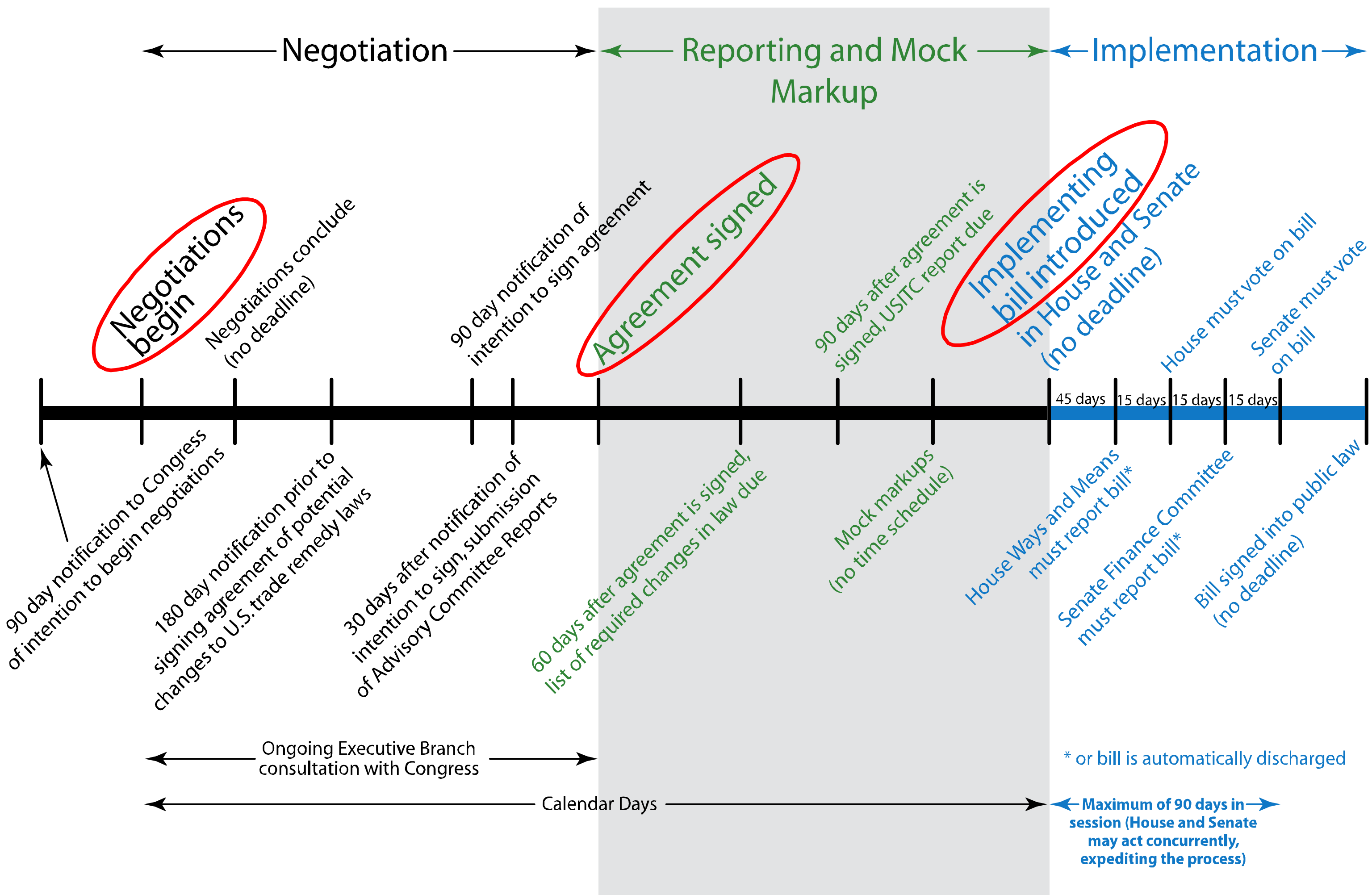
[34] See for example, Destler, I. M. *Renewing Fast-Track Legislation.* Institute for International Economics. Washington. September 1997. pp. 41-43, and Mastel, Greg and Hal Shapiro. Fast Track Forever? *The International Economy.* Summer 2006. pp. 54-55.

Supporters argue that the permanent authority would signal to trade partners that the United States is committed to trade liberalization over the long term. The prior approval procedure for specific negotiations might address the concern that this option could result in 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

The 110th Congress began the TPA renewal debate early, but then shifted focus to addressing the key issues of pending bilateral FTAs with Panama, Peru, Colombia, and South Korea. Each was signed in time to be considered under the 2002 TPA authority. The remaining outstanding case for a near-term renewal of TPA is the Doha Round, although the USTR continues to argue that the lack of TPA could delay future bilateral negotiations as well, and in any case, other countries will continue to negotiate trade agreements irrespective of U.S. policy. It falls to Congress to weigh the costs and benefits of when and if to consider TPA renewal as part of the U.S. trade policy agenda. The TPA decision will also have significant implications for defining the future of the congressional-executive relationship, for the rest of the Bush Administration, and perhaps beyond. The outlook is far from clear, however, given the many controversies that surround TPA and the numerous factors that may influence Congress's decision of how or if to act.

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[35]

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 not binding on the Administration. These meetings provide the last opportunity to make recommendations to the Administration before it sends final implementing legislation to Congress, which initiates the expedited procedures.

II. The President sends a final legal draft text of the trade agreement and a draft implementing bill (with supporting materials) to Congress on a day that it is in session. The draft bill may, or may not, reflect some or all of any amendments adopted by committees in the mock markup.

III. Identical bills are subject to mandatory introduction in each House of Congress on the day received. The bills are referred to the House Ways and Means and Senate Finance Committees jointly, with others if jurisdiction warrants.[36]

IV. Each committee has 45 in session days to report the bill or it is automatically discharged and the bill is placed on the appropriate calendar.[37] An implementing bill subject to TPA procedures is likely to be a revenue bill, in which case the Constitution requires that the Senate ultimately act on the House bill. Under these conditions, the Senate Finance Committee has until the later of the 45th day of session after the Senate bill is introduced or the 15th day of session after the Senate receives the House bill.

V. In each House, after the implementing bill is reported or discharged, any Member may offer a non-debatable motion to consider it. Debate is limited to 20 hours evenly divided between those for and against. The measure cannot be amended, and a motion or unanimous-consent request to suspend this restriction is not in order. If the chamber has not completed floor action by the 15th day after the bill is reported or discharged, any Member may bring it to a vote.

VI. A bill passes by simple majority under the statute. Whichever House acts second (typically the Senate assuming the bill is a revenue bill) considers and debates its own bill, but takes its final vote on the bill received from the other

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[35] Title XXI of the Trade Act of 2002 (P.L. 107-210) and section 151 of the Trade Act of 1974, as amended.

[36] 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.

[37] Cumulatively, the whole process can take as long as 90 in session days, potentially lasting many months.

House (typically the House of Representatives).[38] This procedure ensures that both Houses will ultimately act on the same measure, thereby clearing it to be presented to the President (without the need for conference). Once the implementing bill is signed, under its terms, the agreement enters into force for the United States by Presidential proclamation.

[38] In fact, the Senate can act, and has acted, on its own bill before receiving the House bill. In the case of the Chile FTA implementing bill, the Senate Finance Committee reported out first. When the House bill, which was identical, came over, it was put on the Senate calendar directly. For the CAFTA-DR bill, the Senate actually voted first on its own bill, necessitating a later (procedural) vote to substitute the (identical) language of the Senate bill into the House-passed bill when received. These proceedings in the Senate permitted final action to occur on the House measure, as constitutionally required.