



Trade Promotion Authority (TPA)

Overview

What is TPA? The Trade Promotion Authority (TPA), previously known as “Fast-Track Authority,” is the time-limited authority that Congress uses to set trade negotiating objectives, to establish notification and consultation requirements, and to consider implementing legislation for certain reciprocal trade agreements under expedited procedures, provided that they meet certain statutory requirements (see **Fig. 1**).

What is the current status of TPA? The Bipartisan Congressional Trade Priorities and Accountability Act of 2015 (TPA) (P.L. 114-26) was signed by then-President Obama on June 29, 2015, after a contentious legislative debate. TPA is authorized through July 1, 2021.

NAFTA. Legislation to implement a potential renegotiated North American Free Trade Agreement (NAFTA) may be eligible for consideration under TPA. On May 18, 2017, pursuant to TPA, the President sent Congress a 90-day notification of his intent to begin talks with Canada and Mexico to renegotiate and modernize NAFTA, allowing negotiations to begin in August 2017. After a year of negotiations, USTR Lighthizer announced a preliminary agreement with Mexico on August 27, 2018. On August 31, President Trump gave Congress the required notice 90-day notice that he would sign a revised deal with Mexico. After further negotiations, Canada joined the pact and it was concluded on September 30, 2018. The three nations signed the agreement on November 30, 2019. The Administration satisfied the requirement to provide Congress with a list of changes to U.S. law required to implement the agreement on January 29, 2019. However, the government shutdown delayed work on the International Trade Commission report on the economic effects of the agreement, which is now expected to be delivered to Congress by April 20, 2019.

The proposed USMCA may be the first agreement considered under the 2015 TPA. Under TPA procedures, the Trump Administration notified Congress on October 16, 2018 that it also plans to enter negotiations with the European Union, Japan, and the United Kingdom for potential trade agreements.

Why TPA? The President has the authority to negotiate international agreements, including free trade agreements (FTAs), but the Constitution gives the U.S. Congress sole authority over the regulation of foreign commerce. For 145 years, Congress exercised this authority by directly setting tariff rates. This policy changed with the Reciprocal Trade Agreements Act of 1934 (RTAA). Congress delegated authority to the President to enter into reciprocal trade agreements that reduced tariffs within pre-approved levels, which did not require further congressional action.

In the 1960s, nontariff barriers became topics of trade negotiations. Congress found it necessary to alter the delegated RTAA tariff authority to require implementing legislation to authorize changes in U.S. law necessary to meet these new obligations. Thus, pre-approval was no longer an option. Given an implementing bill could face a potential amendment that could alter a long-negotiated agreement, Congress adopted fast-track authority in the Trade Act of 1974 to provide expedited legislative consideration. Fast-track Authority was renamed Trade Promotion Authority in the Trade Act of 2002.

TPA: Key Facts

- First enacted in 1974
- Renewed 4 times
- Used to consider 13 FTAs and two multilateral GATT/WTO rounds
- TPA 2015: In force until July 1, 2021.

Congress has sought to achieve four major goals in TPA: (1) define trade policy priorities by specifying negotiating objectives; (2) ensure that the executive branch advances these objectives by requiring notification and consultation with Congress; (3) define the terms, conditions, and procedures under which the President may enter into trade agreements and to determine which implementing bills may be approved under expedited authority; and (4) reaffirm the constitutional authority of Congress over trade policy by placing limitations on the use of TPA.

Key Elements of TPAs

Trade Agreements Authority—First enacted by the Trade Act of 1974, TPA provides authority to the President to enter into reciprocal trade agreements on reducing tariff and nontariff barriers. However, Congress must introduce implementing legislation for the agreement to come into effect. This legislation approves the agreement, authorizes changes to existing law and/or changes “strictly necessary or appropriate” for its implementation. If enacted, the trade agreement then can enter into force by presidential proclamation.

Expedited Procedures—The implementing bill is subject to: (1) mandatory introduction; (2) automatic discharge from the committees of jurisdiction; (3) time-limited floor debate; and (4) an “up or down,” simple majority vote.

Negotiating Objectives—Defined by Congress in TPA, the executive branch is expected to advance U.S. trade negotiating objectives if it expects to have the implementing bill considered under expedited rules.

Notification and Consultation—TPA authority and the expedited procedures are extended to the President, subject

to certain notification requirements and consultations with Congress before, during, and after negotiations.

Limitations to the TPA—Congress adopted TPA on pragmatic grounds to prevent trade implementing bills from being delayed or obstructed by congressional procedures. To assure retention of its constitutional authority, Congress has included: time limits on use of the TPA; the option for Congress to disapprove an extension of those limits if the President requests one; and two separate options for Congress to deny expedited consideration of an implementing bill should it determine that there was inadequate consultation or progress towards achieving negotiating objectives. Each Chamber also retains the right to exercise its constitutional rulemaking authority to change TPA rules or override them.

Hearings and “Mock Markups”—Congress has reviewed trade agreements prior to the introduction of an implementing bill. The committees of jurisdiction typically hold hearings on the proposed trade agreement. They often hold informal “mock” markups on a draft implementing bill, followed by a “mock conference.” Although TPA legislation does not explicitly define these steps, they provide for public review of the proposed agreement and allow the President to receive feedback and concerns from Congress, which are, nonetheless, nonbinding on the Administration.

Possible Issues for Congress

Supporting Views. In general, supporters argue that TPA is necessary to ensure that U.S.-negotiated trade agreements are not amended by Congress, which could undermine the credibility of U.S. trade negotiators and potentially unravel a final agreement. The legislation also provides Congress with a periodic opportunity to determine U.S. trade policy—and the Administration’s implementation of that policy—taking into account evolving issues and interests.

Opposing Views. Opponents contend that with TPA,

Congress is relinquishing its constitutional authority over trade by delegating it to the President. They also argue that because trade agreements have become increasingly comprehensive and may go beyond what is typically considered trade-related economic activity, implementing legislation should be subject to normal legislative procedures, including full debate and amendment.

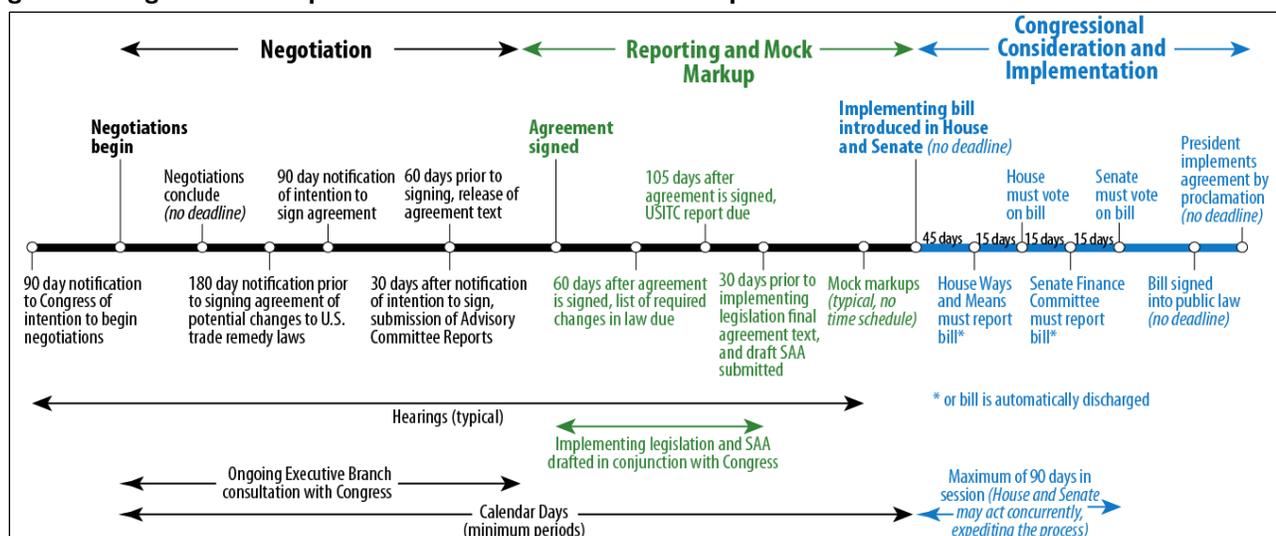
Types of Agreements—Congress may seek to influence the size and scope of future trade agreements that may come before it under TPA. It may express a preference for bilateral, regional, or multilateral negotiations, or it can favor broad-based or sector specific agreements. Congress may also seek to advise the President on the selection of countries with which the United States negotiates.

Adherence to Negotiating Objectives—Congress may wish to examine whether future agreements considered under TPA advance U.S. trade negotiating objectives, potentially resulting in removal of expedited procedures.

Consultation and Notification—While some Members of Congress have been satisfied with the level and depth of executive branch consultation with Congress on ongoing trade negotiations, others have expressed concern with the perceived lack of transparency in the negotiations. TPA-2015 expands on Administration transparency and consultation obligations from those of previous iterations of TPA.

Technical Considerations—Given several decades of experience with TPA, some concerns have arisen over: (1) the interpretation of “necessary or appropriate” language concerning implementing legislation; (2) possible deadlines for submitting an implementing bill once an agreement is signed; and (3) the treatment of text changes in trade agreements after negotiations have closed. For a more detailed look at TPA, see CRS Report R43491, *Trade Promotion Authority (TPA): Frequently Asked Questions*, by Ian F. Fergusson and Christopher M. Davis.

Figure 1. Congressional Requirements and Timeline Under Proposed TPA



Source: CRS.

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