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Trade Promotion Authority (TPA)

The U.S. Constitution empowers Congress to impose tariffs and regulate trade with foreign nations. Periodically, Congress has legislated authorities and procedures to signal to trading partners that trade agreements negotiated by the President will be implemented or voted upon. Commonly known as Trade Promotion Authority (TPA), these statutes usually empower the President to negotiate agreements and adjust tariff rates. Since the 1970s, they have also included expedited congressional procedures to consider legislation necessary to implement agreements that involve both tariff and nontariff barriers, provided the President meets certain negotiating objectives as well as notification and consultation requirements. (**Figure 1**). Historically, it has been common practice, though not formally required, to have the President request that Congress reauthorize TPA. Ongoing or prospective trade negotiations have often prompted such requests.

The most recent TPA was enacted in 2015 (TPA-2015, P.L. 114-26) and expired in July 2021. Congress has implemented the majority of U.S. free trade agreements (FTAs) under TPA statutes. Most recently, Congress used TPA-2015 to approve and implement the U.S.-Mexico-Canada Agreement (USMCA), which entered into force in 2020 and replaced the North American Free Trade Agreement (NAFTA). The Biden Administration has not asked Congress for a new TPA to date. Such a request could spur renewed debate in Congress over whether past trade negotiating objectives, consultation requirements, and legislative processes reflect changing congressional priorities and the evolving global trade environment.

Rationale and Background

Until the early twentieth century, tariffs were the primary source of revenue for the federal government and Congress spent a significant amount of time setting tariff rates. This pattern changed with the Reciprocal Trade Agreements Act (RTAA) of 1934. To promote U.S. exports during the Great Depression and to signal to potential trading partners that the United States would implement agreements as negotiated, Congress delegated authority to the President to negotiate trade agreements addressing tariff barriers and proclaim changes to U.S. tariffs within specified limits without further congressional action.

By the 1960s, nontariff barriers (e.g., health standards, custom procedures) increasingly became the central topic of trade negotiations. Rather than authorize the President to proclaim nontariff-related changes to U.S. law, Congress enacted the first modern TPA in the Trade Act of 1974, which established “fast track” procedures to implement any necessary changes to U.S. law negotiated as part of a trade agreement. In creating TPA, Congress sought to:

- define trade agreement policy priorities by specifying U.S. negotiating objectives;

- ensure that the executive branch advances these objectives through various notification and consultation requirements with Congress;
- define the terms, conditions, and procedures under which the President may enter into trade agreements and determine which implementing bills may be approved under expedited authority; and
- reaffirm the constitutional authority of Congress over trade policy by placing limitations on the use of TPA.

Key Elements of TPA

Proclamation Authority on Tariffs. TPA has maintained RTAA authority (e.g., Section 103(a) of TPA-2015) for the President to negotiate agreements addressing tariff barriers and proclaim changes to U.S. tariffs within specified limits without further congressional action. For more information, see CRS In Focus IF11400.

Trade Agreements Authority. TPA provides authority to the President to negotiate agreements addressing both tariff and nontariff barriers. However, an agreement that requires changes to U.S. law would require congressional action to implement the agreement.

Expedited Procedures. An implementing bill is subject to mandatory introduction; automatic discharge from the committees of jurisdiction; time-limited floor debate; and an “up or down” simple majority vote with no amendments.

Negotiating Objectives. Expedited procedures are only available for agreements that “make progress” in achieving U.S. objectives as defined under TPA.

Notification, Consultation, and Reporting. Expedited procedures are available only when the President fulfills certain notification, reporting, and consultation requirements before, during, and after negotiations.

Limitations to TPA. Congress adopted TPA on pragmatic grounds to ensure that Congress votes in a timely way on the specific text of the agreement negotiated by the President. To guard its constitutional prerogatives, Congress has included a number of limits on TPA, including: time limits on use of TPA; the option for Congress to disapprove an extension of those limits; and two separate mechanisms to deny expedited consideration of an implementing bill for inadequate consultation or progress towards achieving negotiating objectives. Each Chamber also retains the right to exercise its constitutional rulemaking authority to change TPA rules.

Hearings and “Mock Markups.” Congress has reviewed FTAs prior to the introduction of an implementing bill. The committees of jurisdiction typically hold hearings on the proposed agreement. They often hold informal “mock” markups on a draft implementing bill. Mock markups provide for public review of the deal and allow the President to receive nonbinding feedback from Congress.

Stakeholder Views

Supporters of TPA argue that it is necessary to ensure that Congress does not amend the terms of FTAs negotiated by the Administration. Amending the terms of an agreement, supporters argue, could undermine U.S. negotiating credibility and potentially unravel a final agreement. Yet, Congress has directed the Administration to renegotiate certain chapters in USMCA and previous FTAs prior to consideration. Given the ability of each chamber to make—and change—its rules at any time, it is not clear that a statutory process could guarantee an FTA’s consideration, but to date, Congress has ultimately approved every agreement submitted under TPA.

Some observers argue that trade agreements have become increasingly comprehensive and complex, going beyond the types of trade-related economic activity that U.S. trade policy historically has covered. They argue implementing legislation should be subject to normal legislative procedures, including full debate and amendment. Historically, U.S. negotiators, sometimes at the behest of Congress, have avoided substantive U.S. policy changes and have instead encouraged partners to adopt U.S. standards. Some maintain, nevertheless, that enshrining current U.S. policy in trade agreements may make those policies harder to change in the future.

TPA’s expiration renewed some debate over the role of Congress in new trade initiatives. Any trade agreement that Congress does not implement through legislation would necessarily be limited in scope. For example, the 2020 U.S.-Japan Digital Trade Agreement was implemented as an executive agreement and did not require statutory changes. The Biden Administration has not pursued any comprehensive FTAs to date. Its trade initiatives, such as the Indo-Pacific Economic Framework for Prosperity (IPEF), will likely take the form of executive agreements, which has raised concerns over the input and role of Congress, and prompted the Senate Finance Committee to assert that Congress must still approve the final agreements.

Issues for Congress

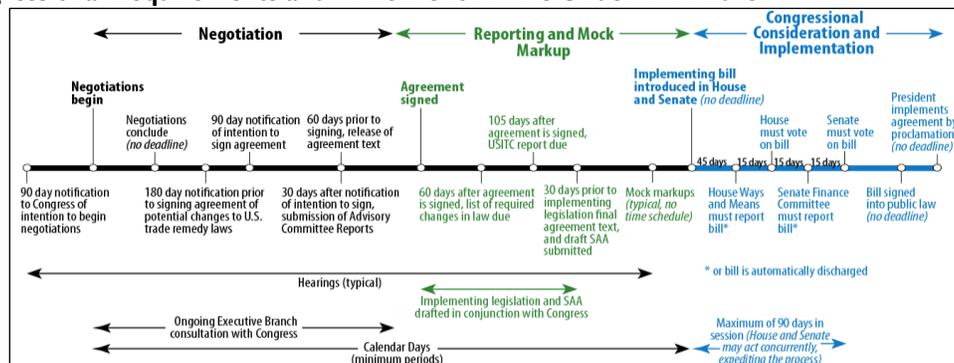
While historically Congress often acts upon a request from the President for TPA, Congress is not required to do so.

Congress may consider TPA renewal, and the continuing rationale for TPA, as well as whether new trade initiatives align with congressional goals, particularly with respect to the balance of authority between the congressional and executive branches. Key issues may include:

- **Types of Agreements.** Congress may seek to influence the size and scope of future trade agreements under TPA, or direct the President to pursue certain negotiations under TPA-like authorities, as per S. 4450. It also may scrutinize presidential use of tariff proclamation authority or negotiation of trade-related agreements that do not require changes to U.S. law.
- **Negotiating Objectives.** Congress may examine whether and how to revise U.S. trade negotiating objectives and priorities, based on the language of recent FTAs like USMCA and on emerging issues such as digital trade barriers; state-led subsidies; and labor and environmental issues, including climate change.
- **Consultation and Notification.** USMCA underwent substantive revisions after the original release of its text. Congress did not receive the new text prior to introduction and did not hold a mock markup. Congress may seek to clarify what circumstances might require the resubmission of a new text and specify the applicable notification period. Congress may also debate institutionalizing the “mock markup” practice in TPA. After IPEF’s launch, many Members expressed concerns over lack of consultation with Congress and the need for a greater congressional role.
- **Implementing Legislation.** Concerns have also arisen over the interpretation of “strictly necessary or appropriate” changes to U.S. law to describe the scope of implementing legislation; the imposition of possible deadlines for submitting an implementing bill once an FTA is signed; or whether implementing legislation may be introduced in a subsequent Congress.

For more information, see CRS Report R43491, *Trade Promotion Authority (TPA): Frequently Asked Questions*.

Figure 1. Congressional Requirements and Timeline for FTAs Under TPA-2015



Source: CRS, based on P.L. 114-26.

Christopher A. Casey, Analyst in International Trade and Finance

Cathleen D. Cimino-Isaacs, Specialist in International Trade and Finance

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