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Trade Promotion Authority (TPA)

Trade Promotion Authority (TPA) is a time-limited authority that Congress uses to establish trade negotiating objectives, notification, and consultation requirements, and procedures to consider implementing legislation for certain reciprocal trade agreements provided that they meet certain statutory requirements (see **Figure 1**).

TPA is authorized through July 1, 2021. TPA was reauthorized in 2015 by the Bipartisan Congressional Trade Priorities and Accountability Act of 2015 (TPA) (P.L. 114-26), which was signed by then-President Obama on June 29, 2015, after a contentious legislative debate. For the first 20 years of TPA's existence (1974-1994), it continually was in force. However, it lapsed from 1994-2002 and from 2007-2015.

TPA: Key Facts

- President tariff reduction authority first enacted in 1934
- TPA First enacted in 1974
- Renewed 4 times
- Used to consider 15 FTAs and 2 multilateral GATT/WTO rounds
- TPA 2015: In force until July 1, 2021

USMCA. TPA was used to implement and approve the United States-Mexico-Canada Agreement (USMCA). In addition, the Trump Administration notified Congress in 2018 that it planned to enter negotiations with the European Union, Japan, and the United Kingdom for potential trade agreements under TPA procedures. In October 2019, the United States and Japan signed two bilateral agreements that were not formally considered by Congress under TPA's expedited procedures.

Rationale and Background

The President has the authority to negotiate international agreements, including free trade agreements (FTAs), but the Constitution gives the U.S. Congress sole authority to lay tariffs and regulate 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 preapproved levels, which did not require further congressional action.

In the 1960s, nontariff barriers became a topic 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. Given an implementing bill could face a potential amendment that could alter a long-negotiated agreement, Congress adopted what is now

known as TPA in the Trade Act of 1974 to provide expedited legislative consideration. Congress has sought to achieve four major goals in TPA:

- 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 to 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

Trade Agreements Authority—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, and 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.

Proclamation Authority. Maintains RTAA authority for the President to negotiate tariff-only agreements within certain parameters without congressional approval.

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—An eligible agreement may be entered into only if it “makes progress” in achieving U.S. trade negotiating objectives as defined under TPA.

Notification, Consultation, and Reporting—TPA and the expedited procedures are extended to the President subject to certain notification, reporting, and consultation with Congress before, during, and after negotiations.

Limitations to 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; and two separate options for Congress to deny expedited

consideration of an implementing bill for inadequate consultation or progress towards achieving negotiating objectives. Each Chamber retains the right to exercise its constitutional rulemaking authority to change TPA rules.

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. Mock markups 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.

Stakeholder Views

Supporters of TPA argue that it 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. Yet, Congress has directed the Administration to renegotiate certain chapters in USMCA and previous bilateral agreements prior to consideration. Given the ability of each chamber to make—and change—its rules at any time, however, it is not clear what could be done to guarantee an agreement’s consideration, but, to date, every agreement submitted under TPA has ultimately been approved by Congress.

Some observers argue that trade agreements have become increasingly comprehensive, going beyond what typically is considered trade-related economic activity. They argue implementing legislation should be subject to normal legislative procedures, including full debate and amendment. However, U.S. negotiators usually seek to avoid substantive U.S. policy changes, rather to change policy in partners to match U.S. standards. Yet, some argue that enshrining current U.S. policy in trade agreements may make those policies harder to change in the future.

Issues for Congress

TPA expires on July 1, 2021, and the 117th Congress may consider its renewal. Presidents generally seek TPA renewal at some point in their terms. Congress may consider the continuing rationale for TPA as well as the following issues.

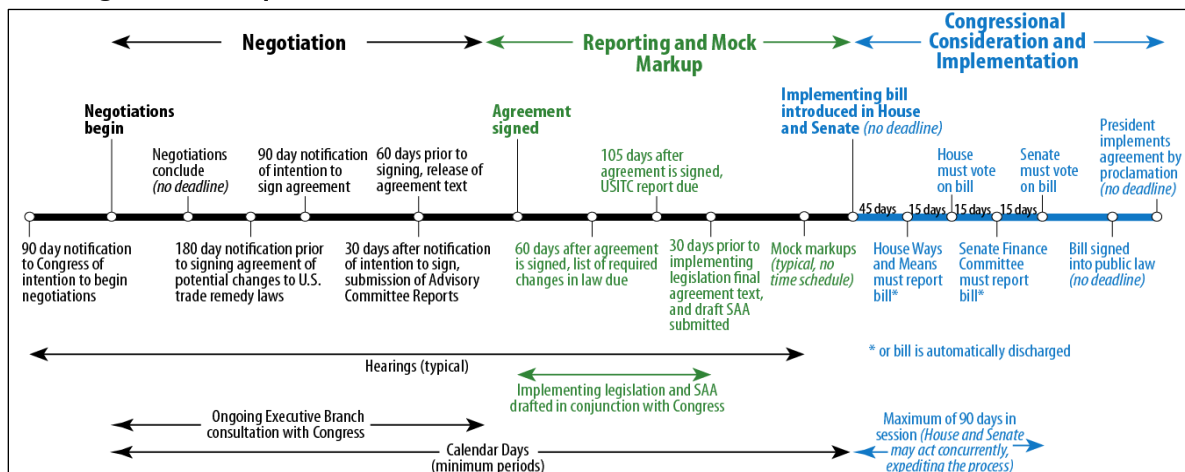
Types of Agreements—Congress may seek to influence the size and scope of future trade agreements under TPA. It also may scrutinize the presidential use of tariff proclamation authority or the negotiation of trade-related agreements that do not require changes to U.S. law.

Negotiating Objectives—Congress may examine whether and how to revise U.S. trade negotiating objectives and priorities, based on the language of recent trade agreements like USMCA and/or on issues such as digital trade barriers, state-led subsidies, labor and environmental issues, including climate change.

Consultation and Notification—USMCA underwent substantive revisions after the original release of its text. The new text was not resubmitted to Congress prior to introduction and no mock markup was held. Given this experience, Congress may seek to clarify the circumstances that would require resubmission of a new text with the applicable notification period. Congress may also debate institutionalizing the “mock markup” practice in TPA.

Implementing Legislation—Over the years, concerns have arisen over the interpretation of “strictly necessary or appropriate” to describe the scope of implementing legislation; the imposition of possible deadlines for submitting an implementing bill once an agreement 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*, by Ian F. Fergusson and Christopher M. Davis.

Figure 1. Congressional Requirements and Timeline Under Current TPA



Source: CRS.

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