

January 13, 2014

# Trade Promotion Authority (TPA)

## Overview

**What is TPA?** Trade Promotion Authority (TPA), previously “fast track,” is the time-limited authority that Congress uses to set trade negotiating objectives, establish consultation requirements, and to have implementing bills for certain reciprocal trade agreements considered under expedited procedures, provided certain statutory requirements are followed (see **Figure 1**).

**What is the current status?** TPA expired as of July 1, 2007. On July 30, 2013, President Obama requested that Congress reauthorize TPA. On January 9, 2014, legislation to reauthorize TPA—the “Bipartisan Congressional Trade Priorities Act of 2014”—was introduced in the House (H.R. 3830) and the Senate (S.1900). Current negotiations on the proposed Trans-Pacific Partnership (TPP), the Transatlantic Trade and Investment Partnership (TTIP), the Trade in Services (TISA), and the World Trade Organization (WTO) Doha Round agreements may require TPA to pass implementing legislation.

**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 150 years, Congress exercised this authority over foreign trade by setting tariff rates directly. This policy changed with the Reciprocal Trade Agreements Act of 1934, in which Congress delegated authority to the President to enter into reciprocal trade agreements that reduced tariffs within pre-approved levels, and so did not require further congressional action.

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Congress has the Power to “...regulate commerce with foreign nations...” and to “...lay and collect taxes, duties, imposts, and excises...”  
*Article I, Section 8, U.S. Constitution*

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In the 1960s, nontariff barriers became part of trade negotiations and Congress altered this delegated authority to require an implementing bill to authorize changes in U.S. law required to meet these new obligations. Pre-approval was no longer an option, and given an implementing bill faced potential amendment that could alter a long-negotiated agreement, Congress adopted fast track authority in the Trade Act of 1974 to ensure that the implementing bill would be given expedited legislative consideration.

The fast track authority was reauthorized four times. It was renamed Trade Promotion Authority in the Trade Act of 2002, the most recent authorization.

Congress has sought to achieve four major goals in TPA: (1) define trade policy priorities and to have them reflected in trade agreement negotiating objectives; (2) ensure that the executive branch adheres to 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 under which implementing bills may be approved; and (4) reaffirm Congress’s constitutional authority over trade by placing limitations on the use of TPA.

**Supporting Views**—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. They also argue that TPA should be renewed now because of the four major trade negotiations currently underway with the United States and to address new issues not reflected in the 2002 authority.

**Opposing Views**—Opponents argue 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 affect economic activities beyond what is typically considered trade, the implementing legislation should be subject to normal legislative procedures, including full debate and amendments.

## Key Elements of TPA

**Trade Agreements Authority**—First enacted in the Trade Act of 1974, TPA historically has provided authority to the President to enter into reciprocal trade agreements that reduce tariff and nontariff barriers, provided an “implementing bill” is introduced in which Congress approves the agreement and authorizes changes in existing law and/or new statutory authority “necessary or appropriate” to implement it. The trade agreement enters into force by presidential proclamation, subject to the implementing bill being enacted into law.

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

**Negotiating Objectives**—Defined by Congress in TPA, the executive branch is expected to honor and adhere to 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 on the status of negotiations.

**Limitations to the TPA**—Congress has 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 extension of TPA should either House of Congress decide not to extend TPA; and the option for Congress to withhold expedited consideration of an implementing bill should Congress determine that there was inadequate consultation and reporting to Congress. Each House also retains the right to exercise its constitutional rulemaking authority to change TPA rules.

**Hearings and “Mock Markups”**—In the past, Congress has reviewed trade agreements prior to an implementing bill being introduced. The House Ways and Means and Senate Finance Committees typically hold hearings on the proposed trade agreement. They also can hold “informal” markups on a draft implementing bill, followed by a “mock conference.” Although not defined in the TPA legislation, these steps provide for public review of the proposed agreement and allow the President to hear feedback and concerns from Congress which are, nonetheless, nonbinding on the Administration.

## Possible Issues for Congress

**The Need and Timing of TPA**—TPA legislation is widely, but not universally, viewed as necessary for passage of major reciprocal trade agreements. Currently, the Obama Administration is proceeding as if such authority is in place, including consulting with Congress on current negotiations. It is not clear, however, that this will necessarily lead to an easy consensus between the two parties and branches of government on new TPA.

**Scope of Negotiating Objectives**—Over a decade has passed since TPA was last renewed, so there is considerable interest in Congress but also differing views on updating negotiating objectives for “21<sup>st</sup> century” trade agreements. Key issues may include intellectual property rights, state-owned enterprises, supply-chain trade flows, currency, and labor and environmental commitments, among other issues.

**Consultation and Notification**—While, some Members of Congress have been satisfied with the Administration current consultation practices, others have expressed dissatisfaction and may wish to consider revising certain past procedures.

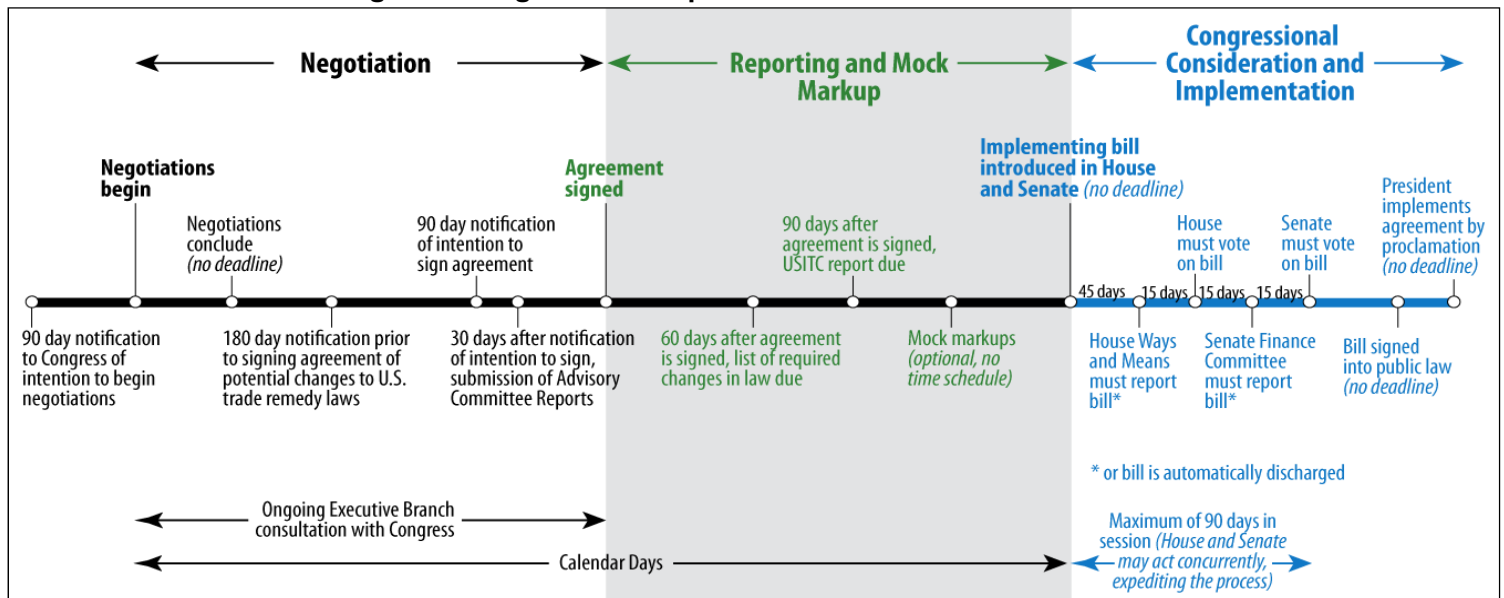
**Technical Considerations**—Given years of experience in the use of TPA, some concerns have arisen over: (1) the interpretation of “necessary or appropriate” language; (2) the possible use of time limitation in the introduction of trade agreement implementing legislation; and (3) the treatment of text changes in trade agreements after negotiations have closed.

For a more detailed look at TPA, see CRS Report RL33743, *Trade Promotion Authority (TPA) and the Role of Congress in Trade Policy*, by William H. Cooper.

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**Figure I. Congressional Requirements and Time Line Under TPA**



Source: CRS.